

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: SB2

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: Ebbin

3. Committee: Courts of Justice

4. Title: Marijuana; decriminalization of simple possession, civil penalty.

5. Summary: Current law imposes a maximum fine of \$500 and a maximum 30-day jail sentence for a first offense for simple possession of marijuana and a second or subsequent offenses is punishable as Class 1 misdemeanor. This bill decriminalizes simple marijuana possession and provides a civil penalty, with a fine of no more than \$50. Civil penalties collected under this legislation would be deposited into the Drug Offender Assessment and Treatment Fund.

The bill defines marijuana to include hashish oil. The bill raises the threshold amount of marijuana subject to the offense of distribution or possession with intent to distribute from one-half ounce to one ounce and provides for a rebuttable presumption that a person who possesses no more than one ounce of marijuana possesses it for personal use.

The bill also provides that the suspended sentence and substance abuse screening provisions and driver's license suspension provisions apply only to criminal violations or to civil violations by a juvenile. The bill also allows a person to petition for expungement of convictions and deferred disposition dismissals for marijuana possession when all court costs and fines and orders of restitution have been paid. The bill defines delinquent acts to include a violation of §18.2-250.1 (possession of marijuana).

Any violation of possession of marijuana may be charged by summons on a form prescribed by the Office of the Executive Secretary of the Supreme Court of Virginia. The form must contain the option for the person charged to prepay the civil penalty and all costs. Additionally, it requires the clerk of court to certify and forward to the Central Criminal Records Exchange, which is managed by the Virginia State Police (VSP), on a form provided by VSP a copy of any order finding a person in violation of this section, as soon as practicable but not later than the close of business on the next business day following the day on which the order was entered.

6. Budget Amendment Necessary: Yes, Item 39 and 425.

7. Fiscal Impact Estimates: Preliminary. See Item 8 below.

8. Fiscal Implications: Current law imposes a maximum fine of \$500 and a maximum 30-day jail sentence for a first offense for simple possession of marijuana and a second or subsequent offenses is punishable as Class 1 misdemeanor. According to data provided by the Virginia Criminal Sentencing Commission, in FY 2019, there were 13,298 first-offense convictions for possession of marijuana (punishable by at least 30 days in jail). Of these, only 6.4 % served time in jail and 93.6 % were sentenced to probation. The median sentence in local jail was 0.3 months. In FY 2019, there were 2,400 second-offense convictions for possession of marijuana (punishable as a Class 1 misdemeanor with up to 12 months in jail). Of these, 21.7 % served time in jail and the rest were sentenced to probation. The median sentence in jail was 0.3 months. Under the provisions of this bill, these would no longer be criminal offenses. Currently, the state reimburses local correctional facility \$4 per inmate per day for individuals subject to these convictions. As a result, this proposal may decrease the need for jail bed space and thus reduce the number of per diem payments; however, the fiscal impact is minimal.

This bill reduces current criminal offenses for simple possession of marijuana and assesses only a civil penalty. Fines assessed under the provisions of this bill are reduced from \$500 to \$50 and are to be paid into the Drug Offender Assessment and Treatment Fund. Currently, the fines assessed under this provision are deposited into the Literary Fund. Therefore, the legislation would reduce the revenue deposited into the Literary Fund.

Moneys in the Drug Offender Assessment and Treatment Fund are appropriated to the Department of Corrections, the Department of Juvenile Justice, and the Commission on Virginia Alcohol Safety Action Program (VASAP) to implement and operate offender substance abuse screening and assessment programs; the Department of Criminal Justice Services for the support of community-based probation and local pretrial services agencies; and the Office of the Executive Secretary of the Supreme Court of Virginia for the support of drug treatment court programs.

This bill also allows for the expungement of a deferred disposition or conviction under §18.2-250.1, which governs the possession of marijuana, after payment of court costs, fines, and restitution.

If the provisions of this bill were to be enacted, the Office of the Executive Secretary (OES) would need to perform enhancements to the three electronic case management systems it maintains to allow for information from expunged cases to be abstracted and retained for inclusion in statistical reports the Courts provide to the General Assembly concerning proper clerk staffing levels and judicial workload. Currently, the number of expungements completed each year is significantly smaller than the pool of cases that are eligible for expungement. Therefore, a method of accurately retaining the abstracted information is necessary to ensure the accuracy of case-data-based statistical reports generated by OES. The OES would store information for expunged cases in a secure network vault that would not be tied to the personal information of any defendant, but from which basic information about caseloads could be extracted for reporting purposes. The OES estimates a one-time cost to develop, provide quality assurance analysis, and to provide training for court personnel related to system enhancements to be \$299,403.

OES also estimates that the provisions of this bill would increase the workload significantly for court clerks, adding approximately ten additional minutes of work per expungement. Based on historical expungement workload rates, the OES estimates that it will need an additional 1.3 FTE at a cost of \$85,974.

The Department of State Police (VSP) is responsible for expunging records from police files. According to VSP, the Central Criminal Records Exchange (CCRE) currently contains 178,781 convictions or deferred dismissals that may be newly eligible for expungement if this legislation were to pass. Of these, it is not known how many individuals would satisfy all courts costs and fines and orders of restitution (as required by the bill) or how many of these may actually petition the court for expungement. According to VSP, the agency processed approximately 4,000 expungement cases per year between 2015 and 2019. Employees in the expungement section can process approximately 500 expungements per employee per year. If, as VSP estimates, the agency would have to process 10 percent of newly identified cases, this would immediately generate an additional 17,878 cases for the agency to process. This would require an additional 36 FTE at an estimated cost of \$2.7 million annually. The VSP estimates that it also would need additional office space to house the new employees at a cost of \$132,500 annually with one-time furnishing costs of \$175,000. The VSP also expects to incur additional technology costs, estimated at \$71,685 in FY2021 and \$55,440 in FY 2022.

The proposed legislation removes the suspension and revocation of driver's license as a term or condition of probation. Suspended drivers pay a \$145 reinstatement fee, of which \$100 is directed to the Trauma Center Fund and \$45 is directed to the Department of Motor Vehicles (DMV). With decriminalization, fewer adults will have their licenses suspended for drug related convictions, resulting in a loss of reinstatement fee revenue from drivers whose licenses would have been suspended in the future but for this bill. The magnitude of this loss cannot be determined, as it depends on convictions.

It is known that DMV currently receives \$230,000 annually in reinstatement fees related to drug offenses and the Trauma Center Fund receives \$512,000. Upon passage of this bill, the total revenues for each would decline an indeterminate amount.

- 9. Specific Agency or Political Subdivisions Affected:** Department of State Police, Courts, Department of Motor Vehicles, Compensation Board, Department of Juvenile Justice, local and regional jails.
- 10. Technical Amendment Necessary:** None
- 11. Other Comments:** Additionally, the DMV provides that 23 U.S.C. § 159 of the U.S. Code requires states to either (1) suspend for 6 months the license of an individual after the conviction of a drug offense, or (2) provide the Secretary of the U.S. Department of Transportation with a certification stating that the Governor of such state opposes suspending licenses for the conviction of drug offenses and pass a resolution stating such opposition. In order to comply, this bill could be amended to address these requirements.

The federal statute requires that the Governor's certification be submitted to the Secretary before the first day of the fiscal year, October 1. If a state fails to do so, it will lose eight percent of its annual federal transportation funding. However, while the proposed legislation makes simple possession of marijuana a civil penalty under state law and not a conviction, DMV has not received clarification from the federal government if the simple possession with a civil penalty would be considered a "conviction" under the federal definition.