

## **Department of Planning and Budget**

### **2020 Fiscal Impact Statement**

**1. Bill Number:** SB2 ES1

<b>House of Origin</b>	<input type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input checked="" type="checkbox"/> Engrossed
<b>Second House</b>	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

**2. Patron:** Herring

**3. Committee:** Courts of Justice

**4. Title:** Possession and consumption of marijuana; 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 engrossed bill allows a court to, as an alternative to the civil penalty, and upon motion of the defendant, require up to five hours of community service for a violation of possessing marijuana.

Under current law, the definition of marijuana does not include any oily extract containing one or more cannabinoids unless such extract contains less than 12 percent of tetrahydrocannabinol by weight. The engrossed bill changes the definition of marijuana to include any oily extract containing one or more cannabinoids. The engrossed bill removes hashish oil from the list of Schedule I drugs.

The bill provides for a rebuttable presumption that a person who possesses no more than one ounce of marijuana possesses it for personal use.

The bill provides that the suspended sentence and substance abuse screening provisions and driver's license suspension provisions apply only to criminal violations.

The engrossed bill provides that any violation of possessing marijuana under § 18.2-250.1 may be charged by summons. A summons for a violation of this section may be executed by a law-enforcement officer when such violation is observed by such officer. The summons used by a law-enforcement officer pursuant to this section must be in form the same as the uniform summons for motor vehicle law violations as prescribed by law (§ 46.2-388). The bill establishes that no court costs will be assessed for violations of possessing marijuana under § 18.2-250.1.

**6. Budget Amendment Necessary:** No.

**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.

The engrossed 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; these fines 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.

The legislation removes the suspension and revocation of driver's license for possession of marijuana. 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.

The engrossed bill contains an enactment clause that states that the provisions of this act serve as the resolution of the General Assembly in expressing its opposition to 23 U.S.C. § 159(a)(3)(A) of the U.S. Code.

The engrossed bill also contains an enactment clause that requires the Governor to provide the necessary certifications required pursuant to 23 U.S.C. § 159(a)(3)(B) of the U.S. Code.