

Department of Planning and Budget
2020 Special Session I - Fiscal Impact Statement

1. Bill Number: HB5141

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

2. Patron: Carroll Foy

3. Committee: Courts of Justice

4. Title: Possession of marijuana.

5. Summary: Currently, under §18.2-250.1, it is unlawful for any person knowingly or intentionally to possess marijuana unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the Drug Control Act (§ 54.1-3400 et seq.) Violations of this provision carry a civil penalty of no more than \$25. This bill legalizes simple possession of marijuana by repealing §18.2-250.1 and removing references to §18.2-250.1 from other parts of the Code of Virginia.

The bill amends the definition of child in need of services to include a child who possesses or uses marijuana before 18 years of age.

The bill prohibits law-enforcement officers from searching or seizing any person, place, or thing solely on the basis of the odor of marijuana, and provides that no evidence discovered or obtained as a result of such unlawful search or seizure is admissible in any trial, hearing, or other proceeding.

The bill allows a person to petition for expungement of convictions, adjudications, and deferred disposition dismissals for marijuana possession when all court costs and fines and orders of restitution have been paid.

The bill removes marijuana paraphernalia from the definition of drug paraphernalia and eliminates the criminal penalty for the sale of or possession with the intent to sell such paraphernalia.

The bill also prohibits employers, educational institutions, agencies, etc., of state and local governments from requiring an applicant for employment or admission or an applicant for a license, permit, registration, or governmental service to disclose any adjudication or conviction that has been expunged. This prohibition applies to any application, interview, or other form of inquiry. Violations of this section are punishable as Class 1 misdemeanors.

6. Budget Amendment Necessary: Indeterminate

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

- 8. Fiscal Implications:** Currently, simple possession of marijuana is a civil offense that carries a fine of no more than \$25, which is deposited into the Drug Offender Assessment and Treatment 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. By legalizing simple possession of marijuana, this bill would reduce the amount of fines collected for civil penalties. However, it is not possible to estimate the impact on the Drug Assessment and Treatment Fund.

This bill expands the definition of “child in need of services” to include a child who possesses or uses marijuana before age 18. The Department of Social Services reports that such children are already served under this definition; therefore, the agency does not expect any fiscal impact from the proposed legislation.

According to the Department of Forensic Science (DFS), the agency stopped accepting simple possession of marijuana cases in October 2014, unless they were submitted with a court order. In January 2020, after the legalization of industrial hemp, DFS rescinded that policy to allow for simple possession of marijuana evidence submissions, but reversed course again effective July 1, 2020, due to decriminalization of these charges.

This bill removes the code section allowing law enforcement to testify at trial to the results of a marijuana field test kit for simple possession cases. Therefore, under the provision of this bill, the court order process no longer would be available to request analysis in these types of cases. Even though the proposed legislation would legalize simple possession of marijuana, DFS expects that evidence would still be submitted to the agency for distribution or intent to distribute cases. The fiscal impact this bill may have on DFS is unknown at this time.

Virginia State Police (VSP) believes that as a result of this legislation’s prohibition of search and seizure on the basis of the odor of marijuana alone, the agency will have to replace their drug detection canines and retrain each trooper assigned to a canine. Costs associated with these efforts are one-time costs, and the agency should be able to absorb these costs (one-time) using their existing appropriations.

The Department of State Police (VSP) is responsible for expunging records from police files. According to VSP, employees in the expungement section can process approximately 500 expungements per employee per year. VSP currently has 10 FTE (including one supervisor) in the expungement section; six of these positions handle expungements full time, and the other three support positions and the supervisor assist with additional expungement workload when they are able. The agency processed in average of 4,268 expungements per year between calendar years 2016-2019.

Under the provisions of this bill, only offenses for which all court costs and fines and all orders of restitution have been satisfied are eligible for expungement. There currently is no way for VSP to identify such cases. According to VSP, there are up to 250,282 records in the Central Criminal Records Exchange (CCRE) that may meet criteria for expungement under the proposed legislation.

At this time, it is not possible to estimate how many petitions for expungement would be processed by VSP in the first year and ongoing. Therefore, different scenarios were developed for purposes reasonably ascertaining the fiscal impact on the operations of the agency.

Assumptions: The prorated first-year cost for a program support technician is \$60,448 and the second-year cost is \$72,537. The prorated first-year cost for a supervisor is \$63,252, and the second-year cost is \$75,903. The prorated first-year cost for a program support manager is \$78,781 and the second-year cost is \$94,538. All personnel costs shown include salary, benefits, general liability insurance and workers' compensation costs.

- Assuming 10 percent of the total records would qualify and would petition for expungement, an estimated 25,028 cases may be eligible for expungement. VSP estimates it would need 50 additional program support technician positions, five supervisor positions, and one program support manager to process these expungements. If, as VSP estimates, all 56 FTE are required, the total annual personnel expenses are estimated at \$4,100,902, which would be prorated to \$3,417,418 the first year. Additionally, if the workload increases as estimated above, VSP believes it would need to lease office space at an approximate cost of \$198,492 annually for 56 new employees. Additional costs include \$272,216 in one-time costs the first year for furniture expenses, and information technology costs in the amount of \$111,496 the first year and \$86,240 ongoing.
- If the number of petitions is five percent of the total estimated cases currently in the CCRE, then VSP would need approximately 25 additional program support technician positions, 2.5 supervisor positions, and one program support manager to process 12,514 expungements for a total of \$2,097,720 per year.
- If the number of petitions is one percent of the total estimated cases, then VSP would need approximately five additional program support technician positions, 0.5 supervisor positions to process 2,503 expungements for a total of \$400,636 per year (it is assumed that no additional program support managers would be needed under this scenario).
- Additional office space and technology costs may be needed as well, depending on the number of positions actually added. Under all scenarios, it is assumed that personnel, office-space, and technology costs would be prorated for the first year depending on the effective date of the bill.

Violations of the terms of § 19.2-392.4 (which prohibits employers, educational institutions, agencies, etc., of state and local governments from requiring an applicant for employment or admission or an applicant for a license, permit, registration, or governmental service to disclose any adjudication or conviction that has been expunged) are punishable as Class 1 misdemeanors. Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail. There is not enough information available to reliably estimate the increase in jail population as a result of this proposal. Any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanant or otherwise local-responsible prisoner held in a jail. It also funds a large portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. According to the Compensation Board's most recent Jail Cost Report (November 2019), the estimated total state support for local jails averaged \$34.07 per inmate, per day in FY 2018.

This bill is not expected to have a fiscal impact on the Department of Juvenile Justice or the courts. Any potential impact on local law enforcement agencies, Commonwealth's Attorneys, or Public Defenders is indeterminate at this time.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Social Services, Department of Forensic Science, Department of State Police, Department of Juvenile Justice, Local law enforcement agencies, Commonwealth's Attorneys, Public Defenders, and Courts

- 10. Technical Amendment Necessary:** No

- 11. Other Comments:** The Code of Federal Regulations (CFR), Section 392.4, prohibits the use and possession of various substances, to include marijuana, by commercial motor vehicle operators. CFR Section 350.201(a)(2) requires states to have compatible regulations in order to be eligible for Motor Carrier Safety Assistance Program (MCSAP) grant funding. According to Virginia State Police, the United States Department of Transportation Federal Motor Carrier Safety Administration has advised that if this passes in its current form, Virginia will be in conflict with this requirement, which may jeopardize \$8.2 million in MCSAP grant funding received annually by Virginia State Police.