



## Fiscal Impact Statement for Proposed Legislation

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### Virginia Criminal Sentencing Commission

#### House Bill No. 2265 (Patron – Wilt)

LD#: 23104068

Date: 01/10/2023

Topic: Industrial hemp; maximum THC concentration

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
None (\$0)\*
- **Local Adult Correctional Facilities:**  
None (\$0)
- **Adult Community Corrections Programs:**  
None (\$0)

- **Juvenile Correctional Centers:**  
None (\$0) \*\*
- **Juvenile Detention Facilities:**  
None (\$0) \*\*

\*\* Provided by the Department of Juvenile Justice

\* Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

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#### Summary of Proposed Legislation:

The proposal increases from 0.3% to 1.0%, in the definition of industrial hemp, the maximum concentration of tetrahydrocannabinol (THC) in the plant *Cannabis sativa* and excludes hemp products with a THC concentration of 1% or less from the definition of marijuana and from tetrahydrocannabinols as found on Schedule I of the Drug Control Act.

The proposal allows the Commissioner of Agriculture and Consumer Services (ACS) to destroy *Cannabis sativa* found to have a THC concentration greater than 1% only if such *Cannabis sativa* is intended for human consumption. It reduces the application and registration requirements for any person seeking to grow, deal in, or process industrial hemp; and prohibits the Board of ACS and the Commissioner from adopting any regulation that prohibits the use of industrial hemp or hemp products in the production of any commercial feed product regulated by the Board.

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#### Analysis:

The proposal increases the maximum concentration of THC permitted in industrial hemp to 1.0% and excludes hemp products with a THC concentration of 1% or less from the definition of marijuana and from tetrahydrocannabinols found on Schedule I of the Drug Control Act. By expanding legal industrial hemp products, the proposal may reduce the number of convictions for existing marijuana offenses. Sentencing outcomes for offenders convicted under existing marijuana laws are shown in the table below.

**Offenders Convicted of Select Offenses (as the Most Serious Offense), FY2021-FY2022**

| Primary Offense   | Total Number of Cases | Percent Sentenced to Probation | Percent Sentenced to Jail | Median Jail Sentence | Percent Sentenced to Prison | Median Prison Sentence |
|---|-----------------------|--------------------------------|---------------------------|----------------------|-----------------------------|------------------------|
| Distribution of marijuana as accommodation (§ 18.2- 248.1(a,3)) <sup>1</sup>                | 16                    | 75.0%                          | 25.0%                     | 2.0 mos.             | N/A                         | N/A                    |
| Distribution, etc., 1 oz. or less marijuana (§ 18.2-248.1(a,1)) <sup>1</sup>                | 693                   | 63.9%                          | 36.1%                     | 1.0 mo.              | N/A                         | N/A                    |
| Distribution, etc., > 1 oz. to 5 lbs. marijuana (§ 18.2-248.1(a,2)) <sup>2</sup>            | 454                   | 41.2%                          | 38.5%                     | 3.0 mos.             | 20.3%                       | 1.5 yrs.               |
| Distribution, etc., more than 5 lbs. marijuana (§ 18.2- 248.1(a,3)) <sup>2</sup>            | 61                    | 42.6%                          | 21.3%                     | 6.0 mos.             | 36.1%                       | 2.0 yrs.               |
| Manufacture marijuana – not for personal use (§ 18.2-248.1(c)) <sup>2</sup>                 | 13                    | 53.8%                          | 23.1%                     | 7.0 mos.             | 23.1%                       | 3.3 yrs.               |
| Distribute marijuana – 3 <sup>rd</sup> or subseq. conviction (§ 18.2-248.1(d)) <sup>2</sup> | 1                     | 100.0%                         | 0.0%                      | N/A                  | 0.0%                        | N/A                    |
| Sell less than 1 oz. marijuana to minor (§ 18.2-255(A,i)) <sup>2</sup>                      | 3                     | 33.3%                          | 0.0%                      | N/A                  | 66.7%                       | 6.0 yrs.               |
| Sell 1 oz. or more marijuana to minor (§ 18.2-255(A,i)) <sup>2</sup>                        | 0                     | N/A                            | N/A                       | N/A                  | N/A                         | N/A                    |
| Transport 5 lbs.+ marijuana into Commonwealth (§18.2-248.01) <sup>2</sup>                   | 8                     | 0.0%                           | 12.5%                     | 2.0                  | 87.5%                       | 3.0 yrs.               |

Notes: The analysis is based on cases in which the specified offense was the primary, or most serious, offense in the sentencing event.

<sup>1</sup> Source: Supreme Court of Virginia's General District Court Case Management System, as analyzed by the Sentencing Commission

<sup>2</sup> Source: Virginia Criminal Sentencing Commission's Sentencing Guidelines Data System

**Impact of Proposed Legislation:**

**State adult correctional facilities.** Because it increases the maximum concentration of THC permitted in industrial hemp and excludes hemp products below that threshold from the definition of marijuana, etc., the proposal is not expected to increase future state-responsible (prison) bed space needs of the Commonwealth.

**Local adult correctional facilities.** Similarly, the proposal is unlikely to increase local-responsible (jail) bed space needs.

**Adult community corrections programs.** The proposal is not expected to affect community corrections programs.

**Virginia's Sentencing Guidelines.** Felony violations of § 18.2-248.1 related to the manufacture or distribution of marijuana are covered by the Sentencing Guidelines. No adjustment to the Guidelines would be necessary under the proposal.

**Juvenile correctional centers.** According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase direct care (juvenile correctional center or alternative commitment placement) bed space needs.

**Juvenile detention facilities.** The Department of Juvenile Justice (DJJ) reports that the proposal will not increase the bed space needs of juvenile detention facilities.

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities and \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

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