

Department of Planning and Budget 2023 Fiscal Impact Statement

1. Bill Number: HB2384

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Adams, L.R.

3. Committee: Courts of Justice

4. Title: Marijuana; search and seizure; driving or operating a motor vehicle, etc., while intoxicated.

5. Summary: This bill removes certain offenses, enumerated in the bill, from the prohibition of searches without a search warrant for the odor of marijuana. The bill establishes a presumption of intoxication if a person has a blood concentration equal to or greater than 0.003 milligrams of delta-9-tetrahydrocannabinol (THC) per liter of blood and makes driving a motor vehicle, driving a boat, and driving a commercial vehicle with such a blood concentration illegal.

The bill establishes a process for preliminary analysis of a person's saliva to screen for the presence of drugs in the saliva, which may be analyzed by any police officer of the Commonwealth, or of any county, city, or town, or by any member of a sheriff's department in the normal discharge of his duties. The bill requires the Department of Forensic Science to determine the proper method and equipment to be used in analyzing saliva samples taken pursuant to this section and to advise the respective police and sheriff's departments of the same. The bill entitles the person being tested, upon request, to observe the process of analysis and to see the results of the analysis on the equipment used to perform the saliva analysis.

6. Budget Amendment Necessary: Yes, Item 404 (Department of Corrections) and Item 422 (Department of Forensic Science)

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

8. Fiscal Implications: According to the Department of Forensic Science, the agency would need one full-time Research Forensic Laboratory Specialist, at a cost of \$91,638 general fund (includes salary and benefits) annually, to manage the additional workload resulting from this proposal. The agency would also need approximately \$15,000 general fund annually to purchase oral test instrument supplies.

According to the Virginia State Police (VSP), this bill is not expected to have a fiscal impact on agency operations.

According to the Virginia Criminal Sentencing Commission (VCSC), establishing a procedure for testing for driving under the influence of drugs and defining a threshold for THC at which point a driver is presumed to be driving under the influence may result in additional convictions under §§ 18.2-266 (Driving motor vehicle, engine, etc., while intoxicated, etc.), 29.1-738 (Operating boat or manipulating water skis, etc., in reckless manner or while intoxicated, etc.), or 46.2-341.24 (Driving a commercial motor vehicle while intoxicated, etc.), including felony convictions for the third or fourth DWI driving offense. In this way, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing databases do not provide sufficient detail to estimate the number of new felony convictions that may result from enactment of the proposal; therefore, the magnitude of the impact on prison bed space needs cannot be estimated.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 2, 2022 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

Additionally, VCSC reports that the proposal may increase local-responsible (jail) bed space needs. There is not enough information available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail and \$15.00 a day for each state-responsible prisoner. It also funds a considerable 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. However, according to the Compensation Board's most recent Jail Cost Report (November 2022), the estimated total state support for local jails averaged \$40.39 per inmate, per day in FY 2021.

The impact this bill may have on the Department of Motor Vehicles is not known at this time. If additional information becomes available, this impact statement will be revised.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Corrections, local and regional jails, Department of State Police, Department of Forensic Science, Commonwealth's Attorneys, Public Defenders Offices, local law enforcement agencies.

10. Technical Amendment Necessary: No

11. Other Comments: None