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HOUSE JOINT RESOLUTION NO. 38

Offered January 10, 2024

Prefiled January 9, 2024

Directing the Joint Legislative Audit and Review Commission to study the scope and cost of the current laws in the Commonwealth penalizing possession of drugs as a felony. Report.

Patrons—Cousins, Clark, Henson and Shin

Referred to Committee on Rules

WHEREAS, a growing number of states do not treat possession of controlled substances as a felony offense with certain restrictions and conditions; and

WHEREAS, the National Institutes of Health classify substance use disorder as a treatable mental disorder; and

WHEREAS, academic studies have identified multiple societal benefits of expanding access to treatment for all people who use substances, including people with substance use disorder, and the reduced criminalization of substance use; and

WHEREAS, it is appropriate to study the scope and cost of the Commonwealth's response to felony drug possession crimes; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Joint Legislative Audit and Review Commission be directed to study the scope and cost of the current laws in the Commonwealth penalizing possession of drugs as a felony.

In conducting its study, the Joint Legislative Audit and Review Commission shall (i) study the current scope of the laws in the Commonwealth governing felony possession of a controlled substance and their impact on adults and juveniles, which shall include analyzing and reporting (a) the number of incidents, arrests, charges, convictions, sentences, and the median sentence lengths for felony possession of a controlled substance; (b) the age, race, ethnicity, and gender of the people arrested for, and of the people convicted of, felony possession of a controlled substance; (c) the number of incidents, arrests, charges, convictions, sentences, and the median sentence lengths for felony possession with the intent to distribute a controlled substance; (d) the age, race, ethnicity, and gender of the people arrested for, and of the people convicted of, felony possession with the intent to distribute a controlled substance; (e) the number of juveniles impacted by felony possession of a controlled substance and felony possession with the intent to distribute a controlled substance specifically on school property disaggregated by age, race, ethnicity, and gender; and (f) education data, to include suspensions, expulsions, and changes in educational placement, for all juveniles arrested, charged, diverted from, adjudicated delinquent, or sentenced for felony possession of a controlled substance or felony possession with the intent to distribute a controlled substance; (ii) calculate the current fiscal cost to the Commonwealth and local governments of felony possession of a controlled substance; (iii) estimate the fiscal cost to the Commonwealth and local governments for treating possession of a controlled substance as a Class 3 misdemeanor or civil offense; (iv) detail the current use of deferred dispositions, including deferred dispositions pursuant to § 18.2-251 or 19.2-298.02 of the Code of Virginia, for people arrested for felony possession of a controlled substance or felony possession with the intent to distribute a controlled substance, including (a) the number, location, capacity, and entry requirements of each deferred disposition program for juveniles and adults; (b) the rate of successful completion for each of these deferred disposition programs; (c) the stage of the criminal process where these deferred disposition programs are made available; and (d) an estimate of the current fiscal cost to the Commonwealth and local governments of these deferred disposition programs; (v) survey the laws of other states to determine whether drug possession is a felony, misdemeanor, or civil offense and, to the extent possible, determine when any of those laws were changed to decrease the penalty; and (vi) review any diversion programs or programs for deferred dispositions currently in operation in other states, noting (a) the number, location, capacity, and entry requirements of each such program; (b) the rate of successful completion for each such program; and (c) the stage of the criminal process where each such program is made available.

All agencies of the Commonwealth shall provide assistance to the Joint Legislative Audit and Review Commission for this study, upon request.

The Joint Legislative Audit and Review Commission shall complete its meetings by November 30, 2024, and the chairman shall submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the 2025 Regular Session of the General Assembly. The executive summary shall state whether the Joint Legislative Audit and

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59 Review Commission intends to submit to the General Assembly and the Governor a report of its
60 findings and recommendations for publication as a House or Senate document. The executive summary
61 and report shall be submitted as provided in the procedures of the Division of Legislative Automated
62 Systems for the processing of legislative documents and reports and shall be posted on the General
63 Assembly's website.