



# Fiscal Impact Statement for Proposed Legislation

## Virginia Criminal Sentencing Commission

### House Bill No. 439 (Patron – Arnold)

LD #: 24101035

Date: 12/29/2023

Topic: Mandatory minimum sentences for second or subsequent drug possession

#### Fiscal Impact Summary:

<ul style="list-style-type: none"> <li>• <b>State Adult Correctional Facilities:</b> \$2,885,227 (55 beds)</li> <li>• <b>Local Adult Correctional Facilities:</b> \$1,640,615 (111 beds)</li> <li>• <b>Adult Community Corrections Programs:</b> None (\$0)</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Juvenile Direct Care:</b> Cannot be determined *</li> <li>• <b>Juvenile Detention Facilities:</b> Cannot be determined *</li> </ul> <p>* Provided by the Department of Juvenile Justice</p>
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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.

#### Summary of Proposed Legislation:

The proposal amends § 18.2-250 to create mandatory minimum penalties for second or subsequent convictions for possession of any controlled substance classified as a Schedule I or II drug. According to the proposal:

- The sentence would include a mandatory minimum term of 20 days and a mandatory minimum fine of \$500 if any person is convicted of a second possession offense within less than five years;
- The sentence would include a mandatory minimum term of 45 days and a mandatory minimum fine of \$500 if any person is convicted of a second possession offense within 10 years;<sup>1</sup>
- The sentence would include a mandatory minimum term of 90 days and a mandatory minimum fine of \$500 if any person is convicted of three possession offenses within 10 years;
- The sentence would include a mandatory minimum term of six months and a mandatory minimum fine of \$1,000 if any person is convicted of three possession offenses within a five year period; and
- The sentence would include a mandatory minimum term of one year and a mandatory minimum fine of \$1,000 if any person is convicted of a fourth or subsequent possession offense within 10 years.

Moreover, the proposal specifies that the driver’s license of any person in violation of this section with respect to any controlled substance classified as Schedule I or II may be suspended for a period of up to

<sup>1</sup> It is noted that the proposed mandatory minimum for a second offense within five years is less than the proposed mandatory for a second offense within ten years. Typically, a higher mandatory minimum is established for multiple offenses committed within a shorter period of time. The Commission analyzed the impact of the proposal as drafted.

30 days for the first offense and shall be suspended for a period of 90 days for the second or subsequent offenses.<sup>2</sup>

**Analysis:**

According to fiscal year (FY) 2022 and FY2023 Sentencing Guidelines data, 14,622 felony sentencing events included a conviction for possession of Schedule I or II drugs. In the vast majority of these sentencing events (approximately 91%), possession of the Schedule I or II drug was the primary, or most serious offense, at sentencing. More than half of the offenders (51.8%) did not receive an active term of incarceration to serve after sentencing. Another 34.1% of the offenders received a local-responsible (jail) term for which the median sentence was 3.0 months. The remaining 14.1% of offenders received a state-responsible (prison) term with a median sentence of 1.5 years. Furthermore, the data reveal that approximately 68% of the offenders in these sentencing events do not have a previous conviction for possession of Schedule I or II drugs within the most recent 10 years. Thus, 32% of offenders would be potentially affected by the enactment of this proposal.

**Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposed legislation would impose various mandatory minimum sentences on the offenders convicted of second or subsequent offenses for possession of a Schedule I or II drug. Compared to current law, the proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. The impact is estimated to be 55 beds statewide by FY2030. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$2,885,227.

**Estimated Six-Year Impact in State-Responsible (Prison) Beds**

FY25	FY26	FY27	FY28	FY29	FY30
25	51	54	54	55	55

**Local adult correctional facilities.** Under the proposal, some offenders may receive longer local-responsible (jail) sentences and other offenders may be given a state prison sentence rather than a local jail sentence. The net impact on local-responsible (jail) beds is estimated to be 111 beds by FY2030 (state costs: \$1,640,227; local costs: \$2,573,358).

**Estimated Six-Year Impact in Local-Responsible (Jail) Beds**

FY25	FY26	FY27	FY28	FY29	FY30
71	107	110	111	111	111

**Adult community corrections resources.** The proposal is not expected to increase the need for community corrections resources and will delay the need for services for some offenders affected by the proposal, as they will stay in prison longer prior to being released to the community.

**Virginia’s Sentencing Guidelines.** The Sentencing Guidelines cover convictions for possession of a Schedule I or II drug. Such offense is not defined as violent in § 17.1-805(C) for the purposes of the Guidelines. No adjustment to the Guidelines would be necessary under the proposal.

**Juvenile direct care.** According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

<sup>2</sup> Under current law, felony offenses defined in § 18.2-250 are eligible for the enhanced sentence credits specified in § 53.1-202.3, whereby offenders serve a minimum of 67% of the sentence ordered by the court. The proposed legislation does not change the earned sentence credits available to offenders convicted of these felonies.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal’s impact on the bed space needs of juvenile detention facilities cannot be determined.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$2,885,227 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

**Assumptions underlying the analysis include:**

**General Assumptions**

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety’s Committee on Inmate Forecasting in 2023.
2. New cases resulting in state-responsible sentences were based on forecasts approved by the Secretary of Public Safety’s Committee on Inmate Forecasting in 2023.
3. Cost per prison bed was assumed to be \$52,894 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*
4. Cost per jail bed was based on The Compensation Board’s FY2021 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$40.39 per day or \$14,752 per year. The local cost was calculated by using the daily expenditure cost of \$107.81 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$63.35 per day or \$23,139 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

**Assumptions relating to offenders**

1. To estimate the number of offenders who may be affected by the proposal, the Commission examined FY2022-FY2023 Sentencing Guidelines data to identify sentencing events in which offenders were convicted of possession of Schedule I or II drugs under § 18.2-250 as completed, attempted, or conspired acts.<sup>3</sup> The Commission then excluded 1) individuals who do not have reliable personally identifiable information to look up a criminal history and 2) individuals who do not have a previous conviction for the same offense within the most recent 10 years. This step isolated offenders who were most likely to be affected by the proposal.
2. The Commission examined prior criminal history data from FY2013-FY2023 to identify offenders whose current conviction would represent a second or subsequent conviction for possession of Schedule I or II drugs. The Commission investigated the criminal history search separately for FY2022 and FY2023 data.
3. The counting of the previous convictions was based on the sentencing event. That is, if the offender was convicted of multiple counts of possession of Schedule I or II drugs in the same previous sentencing event (prior to the current conviction), it was counted as only one prior conviction.

**Assumptions relating to sentencing and time served**

1. The impact of the proposed legislation, which would be effective on July 1, 2024, is phased in to account for case processing time.
2. It was assumed that all eligible offenders convicted of possession of Schedule I or II drugs who have the specified number of prior convictions would be sentenced to the highest applicable mandatory minimum term in the proposal. The Commission assumed that the mandatory minimum terms for multiple counts of the offense would run concurrently, as the proposal does not specify that the terms must run consecutively.
3. Identified offenders who received sentences less than the proposed mandatory minimums were assumed to receive the mandatory minimum term specified in the proposal. Offenders currently receiving sentences exceeding the proposed mandatory minimum were assumed to be unaffected by the proposed legislation.
4. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections’ facilities were earning sentence credits as of September 30, 2023. Beginning July 1, 2022, most nonviolent felons were eligible for higher rates of earned sentence credits (up to 15 days for every 30 days served, see § 53.1-202.3). For offenders convicted of felony

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<sup>3</sup> In fact, the possession of Schedule I or II as an attempted or conspired act accounts for less than 1% of the cases. Nearly all of the cases are identified as a completed act.

drug offenses and sentenced during the forecast horizon, the overall average rate of sentence credits earned by these individuals was estimated to be 29.8%.

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