



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 698

(Patron – Krizek)

LD#: 24104440

Date: 01/11/2024

Topic: Licensing and retail system for cannabis; cannabis control

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Direct Care:**
Cannot be determined **
- **Juvenile Detention Facilities:**
Cannot be determined **

** Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

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 creates a regulatory and licensing structure for the cultivation, manufacture, testing and sale of marijuana and marijuana products, as well as retail marijuana stores, to be administered by the Virginia Cannabis Control Authority. The Authority has the power to grant, suspend, and revoke licenses for the cultivation, manufacture, distribution, sale, and testing of marijuana and marijuana products. Under the proposal, the Authority may begin issuing marijuana licenses on July 1, 2025.

The proposal establishes a number of new misdemeanor offenses for engaging in activities without the required license, otherwise engaging in prohibited practices related to the production, sale, etc., of marijuana, or failing to pay all applicable taxes associated with the retail sale of marijuana or marijuana products. Violations of specified licensing requirements on the part of licensees would be Class 1 misdemeanors; however, the proposal specifies that tax returns filed monthly by licensees must be made under oath (see proposed § 4.1-1005). Also, the Authority can require persons to give testimony or to answer interrogatories under oath (see proposed § 4.1-1007). Under § 18.2-434, a person to whom an oath is lawfully administered who willfully and falsely swears to any material matter may be prosecuted for perjury, a Class 5 felony.¹ If a materially false statement on the required tax return or false statements to the Authority while under oath could be prosecuted in the same manner as perjury and other false swearings, licensees and other individuals may be subject to felony perjury charges.

¹ Under current law, perjury under § 18.2-434 is eligible for the enhanced sentence credits specified in § 53.1-202.3, whereby individuals convicted of this offense will serve a minimum of 67% of the sentence ordered by the court.

The 2021 General Assembly (Special Session I) legalized simple possession of an ounce or less of marijuana by persons who are at least 21 years of age and provided that persons 21 years of age or older may cultivate up to four marijuana plants at home for personal use. Possession of more than one ounce but less than four ounces of marijuana on one's person or in a public place is subject to a civil penalty of up to \$25. Possession of four ounces but not more than one pound of marijuana is a Class 3 misdemeanor or, for a second or subsequent offense, a Class 2 misdemeanor. Possession of more than one pound of marijuana on one's person or in a public place is a felony punishable by 1 to 10 years. Violation of the home cultivation law is a Class 6 felony if the individual is cultivating 50 to 100 plants or, if the individual is cultivating more than 100 plants, a felony punishable by imprisonment of 1 to 10 years.

Currently, under § 18.2-248.1, sale, distribution, or possession with intent to distribute one ounce or less of marijuana is a Class 1 misdemeanor. Distribution of more than one ounce up to five pounds of marijuana is a Class 5 felony, while distribution of more than five pounds and manufacture of marijuana are both felonies punishable by up to 30 years in prison. A third or subsequent conviction for felony distribution of marijuana is punishable by up to life in prison and requires a five-year mandatory minimum prison sentence. The *Code* currently includes additional felonies for transporting certain amounts of marijuana into the Commonwealth, distributing large quantities of marijuana, distributing marijuana to a minor, involving a minor in the distribution of marijuana, and distributing near schools or other specified locations. The proposal does not repeal § 18.2-248.1 or the other statutes.

Analysis:

The number of individuals who may be convicted of the new misdemeanors and felonies defined in the proposal, and the sentences these individuals may receive, is not known. By creating a regulatory and licensing structure, the proposal may possibly result in fewer convictions under existing provisions related to the unlawful distribution of marijuana. Whether or not, or the extent to which, this will occur is not known. Sentencing outcomes for offenders convicted under existing marijuana and perjury laws are shown in the table below.

Offenders Convicted of Select Offenses (as the Most Serious Offense), FY2022-FY2023

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)) ^a	9	66.7%	33.3%	2.0 mos.	N/A	N/A
Distribution, etc., ≤1 oz. marijuana – misd. (§ 18.2-248.1(a,1)) ^a	257	67.3%	32.7%	1.0 mo.	N/A	N/A
Distribution, etc., > 1 oz. to 5 lbs. marijuana - felony (§ 18.2-248.1(a,2)) ^b	296	40.9%	35.1%	3.0 mos.	24.0%	2.0 yrs.
Distribution, etc., > 5 lbs. marijuana – felony (§ 18.2- 248.1(a,3)) ^b	79	32.9%	25.3%	6.0 mos.	41.8%	1.8 yrs.
Manufacture marijuana, not for personal use – felony (§ 18.2-248.1(c)) ^b	11	72.7%	18.2%	6.5 mos.	9.1%	5.0 yrs.
Distribute marijuana, 3 rd or subseq. conviction – felony (§ 18.2-248.1(d)) ^b	1	0.0%	0.0%	N/A	100.0%	5.0 yrs.
Sell less than 1 oz. marijuana to minor – felony (§ 18.2-255(A,i)) ^b	2	50.0%	0.0%	N/A	50.0%	2.0 yrs.
Sell 1 oz. or more marijuana to minor – felony (§ 18.2-255(A,i)) ^b	0	N/A	N/A	N/A	N/A	N/A
Transport 5 lbs.+ marijuana into state – felony (§18.2-248.01) ^b	3	0.0%	33.3%	2.0	66.7%	3.3 yrs.
Perjury -felony (§ 18.2-434) ^b	145	43.4%	46.2%	4.0 mos.	10.3%	1.5 yrs.

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

^a Source: Supreme Court of Virginia's General District Court Case Management System, as analyzed by the Sentencing Commission

^b Source: Virginia Criminal Sentencing Commission's Sentencing Guidelines Data System

Impact of Proposed Legislation:

State adult correctional facilities. The number of individuals who may be convicted of the new misdemeanors and felonies defined in the proposal, and the sentences these individuals may receive, is not known. Whether or not, or the extent to which, the proposal may reduce the number of felony convictions under existing marijuana laws, cannot be determined based on available data. The net effect on the number of convicted individuals and the impact on sentencing patterns cannot be estimated. Therefore, the net impact on the future state-responsible (prison) bed space needs cannot be quantified.

Local adult correctional facilities. Similarly, the net impact on local-responsible (jail) bed space needs cannot be estimated.

Adult community corrections programs. The net effect of the proposal on adult community corrections resources cannot be determined.

Virginia's Sentencing Guidelines. Felony violations under § 18.2-248.1 related to the manufacture or distribution of marijuana (including possession with intent to distribute) and § 18.2-434 related to perjury are covered by the Sentencing Guidelines. These offenses are not defined as violent in § 17.1-805(C) for the purposes of the Guidelines. No immediate adjustment to the Guidelines would be necessary under the proposal. However, if the proposal is enacted, the Sentencing Commission in the future would conduct detailed analyses of sentencing patterns to determine if revisions to the Guidelines were necessary.

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.

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.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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