

## Department of Planning and Budget 2024 Session Fiscal Impact Statement

**1. Bill Number:** HB455 ER

**House of Origin**     Introduced     Substitute     Engrossed  
**Second House**     In Committee     Substitute     Enrolled

**2. Patron:**    Callsen

**3. Committee:** Passed both Houses

**4. Title:**    Possession of an item containing less than one gram of a controlled substance; penalty.

**5. Summary:** Under current law, possession of a controlled substance classified in Schedule I or II of the Drug Control Act is punishable as a Class 5 felony. This bill provides that, upon motion of the attorney for the Commonwealth, possession of such a controlled substance will be reduced to unlawful possession of an item containing less than one gram of a controlled substance. Violation of this provision is punishable as a Class 1 misdemeanor.

The bill provides that this section of the Code of Virginia does not apply to the possession of an item containing any residue of fentanyl, including its isomers, esters, ethers, salts, and salts of isomers, as described in Schedule II of the Drug Control Act (§ 54.1-3400 et seq.), except as authorized in the Drug Control Act. The bill defines residue as a sample that is too small to be weighed accurately.

**6. Budget Amendment Necessary:** No

**7. Fiscal Impact Estimates:** Final, see Item 8 below.

**8. Fiscal Implications:** Currently, violation of § 18.2-250 (Possession of controlled substances unlawful) is punishable as a Class 5 felony, which carries a term of imprisonment of not less than one year nor more than 10 years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

The proposed legislation allows for the charge to be reduced to a Class 1 misdemeanor, upon motion of the attorney for the Commonwealth, to unlawful possession of an item containing less than one gram of a controlled substance. Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail and a fine of not more than \$2,500, either or both.

According to the Virginia Criminal Sentencing Commission (VCSC), there is not enough information to reliably predict the impact this bill may have. However, VCSC provided the following data regarding this proposal:

- According to fiscal year (FY) 2022 and FY 2023 Sentencing Guidelines data, 14,622 felony sentencing events included a conviction for possession of Schedule I or II drugs under § 18.2-250(A,a). For 13,381 of these sentencing events, possession of the Schedule I or II drug was the primary, or most serious, offense (meaning there was not a more serious felony in the event). Of these events, 54.7% (7,317) of the defendants did not receive an active term of incarceration to serve after sentencing. For 9,277 of the sentencing events, possession of the Schedule I or II drug was the only offense in the sentencing event. Of these events, 63.2% (5,860) of the defendants did not receive an active term of incarceration to serve after sentencing.
- For 2,076 of the sentencing events, possession of the Schedule I or II drug was the only offense and there was no prior record scored on Section A of the Guidelines (the defendant may have had one prior Class 6 felony or prior misdemeanors but these would not have been scored given the way section A is structured; otherwise these defendants had no prior record). Of these events, 94.2% (1,955) of the defendants did not receive an active term of incarceration to serve after sentencing.
- If defendants who possessed a knife or firearm at the time of the offense are excluded, there were 2,000 sentencing events. Of these events, 94.2% (1,884) of the defendants did not receive an active term of incarceration to serve after sentencing.

Although there is not enough information available to reliably estimate the decrease in jail or state prison population as a result of this proposal, any decrease in jail population will decrease costs to the state. The Commonwealth currently pays \$5.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail, and \$15.00 a day for state responsible prisoner held in local jail. It also funds a large 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 2023), the estimated total state support for local jails averaged \$45.76 per inmate, per day in FY 2022.

**9. Specific Agency or Political Subdivisions Affected:** Courts, law enforcement agencies, Department of Corrections, and local and regional jails

**10. Technical Amendment Necessary:** No

**11. Other Comments:** None