



Fiscal Impact Statement for Proposed Legislation
Virginia Criminal Sentencing Commission

House Bill No. 773
(Patron – Herring)

LD#: 24104801

Date: 01/12/2024

Topic: Distribution, sale, etc., of marijuana

Fiscal Impact Summary:

<ul style="list-style-type: none"> • State Adult Correctional Facilities: None (\$0)* • Local Adult Correctional Facilities: Cannot be determined • Adult Community Corrections Programs: Cannot be determined 	<ul style="list-style-type: none"> • Juvenile Direct Care: Cannot be determined ** • Juvenile Detention Facilities: Cannot be determined ** <p>** Provided by the Department of Juvenile Justice</p>
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* 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 repeals § 18.2-248.1, related to the manufacture and distribution of marijuana and reduces a number of existing crimes from felonies to misdemeanors. These include: distributing marijuana to minors (§ 18.2-255), delivery of marijuana to prisoners (§ 18.2-474.1), unlawfully transporting five pounds or more of marijuana into the Commonwealth (§ 18.2-248.01), and obstruction of justice by force or threat by a person charged with marijuana distribution (§ 18.2-460(C)). The proposal eliminates the felony for possessing a firearm while unlawfully distributing more than one pound of marijuana (§ 18.2-308.4), thereby removing the existing five-year mandatory minimum penalty for the offense. The proposal also removes marijuana from several existing provisions including: drug kingpin laws (§ 18.2-248), prohibitions on the sale of certain drugs near schools (§ 18.2-255.2), and prescription fraud (§ 18.2-258.1).

The proposal establishes a number of new misdemeanor and felony offenses related to marijuana. For example, unlawful cultivation of marijuana would be a Class 6 felony.¹ Distribution or sale of marijuana, except as provided by law, would be a Class 2 misdemeanor for the first offense and a Class 1 misdemeanor for a second or subsequent offense; however, any sale of marijuana to a person who is under the age of 21 or intoxicated would be a Class 1 misdemeanor. In addition, the proposal expands § 5.1-13 to make it a Class 6 felony to operate an aircraft while under the influence of marijuana² and amends § 18.2-308.012 to make it a Class 1 misdemeanor to carry a concealed handgun while under the influence of marijuana.

¹ Under current law, the proposed felony is eligible for the enhanced sentence credits specified in § 53.1-202.3. Individuals convicted of this offense will serve a minimum of 67% of the sentence ordered by the court.

² The felony offense defined in § 5.1-13 is eligible for the enhanced sentence credits specified in § 53.1-202.3. Individuals convicted of this offense will serve a minimum of 67% of the sentence ordered by the court.

Legislation adopted by the 2021 General Assembly (Special Session I) legalized possession of up to one ounce of marijuana by persons who are 21 years of age or older and permitted persons 21 years of age or older to cultivate up to four marijuana plants for personal use, effective July 1, 2021. Possession of more than one ounce of marijuana by a person 21 or older is subject to a civil penalty of up to \$25. Possession of four ounces or more 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, distribution of 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 distribution of marijuana is punishable by up to life in prison and requires a five-year mandatory minimum prison sentence. The proposal repeals § 18.2-248.1.

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. Individuals would no longer be subject to prosecution under § 18.2-248.1 and, with few exceptions, could be charged only with misdemeanors under the proposed provisions. See table for recent convictions under § 18.2-248.1 and other statutes.

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 – misd. (§ 18.2- 248.1(a,3)) ^a	9	66.7%	33.3%	2.0 mos.	N/A	N/A
Distribution, etc., 1 oz. or less 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., more than 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 Commonwealth – felony (§18.2-248.01) ^b	3	0.0%	33.3%	2.0	66.7%	3.3 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 proposal would eliminate a number of felony penalties related to marijuana from the *Code* and reduce several other felonies to lower-level felonies or misdemeanors. Conversely, the proposal creates or expands only two felonies (operating an aircraft while under the influence of marijuana [§ 5.1-13] and complaints made on oath related to search warrants [proposed 4.1-1303], for which a false swearing may be punishable as felony perjury). While the net effect on the number of felony convictions cannot be quantified, the proposal is unlikely to increase the future state-responsible (prison) bed space needs of the Commonwealth.

Local adult correctional facilities. Because it reduces a number of felonies to misdemeanors and creates several new misdemeanors related to marijuana, the proposal may increase local-responsible (jail) bed space needs. The impact on jail beds cannot be estimated.

Adult community corrections programs. The proposal may decrease the need for state adult community corrections resources and increase the need for local community-based probation services. The net effect of the proposal on adult community corrections programs cannot be determined.

Virginia's Sentencing Guidelines. Felony violations of § 18.2-248.1 related to the manufacture or distribution of marijuana and § 18.2-434 related to perjury are currently covered by Virginia's Sentencing Guidelines. These offenses are not defined as violent under § 17.1-805(C) for the purposes of the Guidelines. Also, the proposed offense for unlawful cultivation would not be defined as violent under this provision. No immediate 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.

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 is \$0 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.

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