

Department of Planning and Budget 2022 Fiscal Impact Statement

1. Bill Number: SB411

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Morrissey

3. Committee: Judiciary

4. Title: Possession of controlled substances; penalties.

5. Summary: Currently, under § 18.2-250 (Possession of controlled substances unlawful), it is unlawful for any person knowingly or intentionally to possess a controlled substance classified as Schedule I or II unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice. Any person other than an inmate of a penal institution who violates this provision is guilty of a Class 5 felony. Possession of a Schedule III controlled substance is punishable as a Class 1 misdemeanor. Possession by anyone of a Schedule IV controlled substance is punishable as a Class 2 misdemeanor; possession by anyone of a Schedule V controlled substance is punishable as a Class 3 misdemeanor and possession by anyone of a Schedule VI controlled substance is punishable as a Class 4 misdemeanor.

This bill reduces penalties so that possession by anyone of a Schedule I or II controlled substance is punishable as a Class 1 misdemeanor, possession by anyone of a Schedule III controlled substance is punishable as a Class 2 misdemeanor, and possession of a Schedule V or VI controlled substances is punishable as a Class 4 misdemeanor. The bill removes references to felony convictions of § 18.2-250 in several sections of the Code of Virginia.

The bill removes felony violations of possession of a controlled substance from the definition of barrier crime related to criminal history checks for eligibility for various types of employment, to volunteer or provide certain services, or to establish or operate certain types of regulated businesses.

The bill allows any person not previously convicted of a violation of § 18.2-248 (Manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled substance or an imitation controlled substance) or § 18.2-250 (Possession of controlled substances) to be placed on probation. The bill requires the probationer to submit to drug and alcohol tests.

The bill changes the penalty for an attempt to commit a felony drug offense from imprisonment for not less than one nor more than 10 years to a Class 6 felony.

The bill and removes the felony offenses for a prisoner to secrete or have in his possession any chemical compound that he has not lawfully received, any Schedule III controlled

substance, or marijuana. The bill makes secreting or possessing a controlled substance or marijuana by a prisoner punishable the same as possession of such controlled substances or marijuana by a person who is not in prison.

The bill amend the definition of "controlled substance" for purposes of the Drug Control Act so that it does not include mere residue of any drug, substance, or immediate precursor in Schedules I through VI that is not a countable dosage unit.

- 6. Budget Amendment Necessary:** Indeterminate
- 7. Fiscal Impact Estimates:** Preliminary. See Item 8 below.
- 8. Fiscal Implications:** The Virginia Criminal Sentencing Commission provided the following historical data relating to convictions for drug possession.

**Sentencing Events Involving
Select Drug Offenses as the Most Serious Offense
FY2020-FY2021**

Offense	As Primary (Most Serious) Offense	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
Possession of a Schedule I or II Drug (§ 18.2-250(A,a)) ¹	14,547	53.6%	36.9%	3.0 months	9.5%	1.5 years
Prisoner Possess, Secrete Drug (§ 53.1-203(6)) ^{1, 4}	125	10.4%	45.6%	7.0 months	44.0%	1.4 years
Attempt to Commit a Felony Drug Offense ¹	40	32.5%	37.5%	3.0 months	30.0%	1.9 years
Possession of a Schedule IV Drug (§ 18.2-250(A,b1)) ²	243	81.5%	18.5%	0.7 months	N/A	N/A
Possession of a Schedule V Drug (§ 18.2-250(A,b2)) ²	39 ³	N/A	N/A	N/A	N/A	N/A

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

¹ Source: Virginia Criminal Sentencing Commission's Sentencing Guidelines Data System

² Source: Supreme Court of Virginia's General District Court Case Management System, as analyzed by the Sentencing Commission

³ This is a fine-only offense. Another 26 offenders had a conviction for this offense along with other misdemeanor convictions.

⁴ The type of drug possessed by the prisoner not known

By reducing a Class 5 felony penalty to a Class 1 misdemeanor, the proposed legislation is expected to reduce the number of offenders who would be sentenced to terms in state prisons. Under the proposals in this bill, offenders sentenced to active terms of incarceration would serve the sentence in local jails. 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.

Under the provisions of this bill, anyone unlawfully possessing a Schedule III controlled substance is subject to a Class 2 misdemeanor, which is punishable by a sentence of up to six months in jail and a fine of not more than \$1,000, either or both.

The potential savings associated with this bill depends on how many offenders would have been sentenced to a state-responsible term and where those offenders would ultimately serve their sentences. The cost of a bed in a DOC facility (prison) in FY2020 was \$36,305 as calculated by the Department of Planning and Budget. The Commonwealth pays localities \$12.00 a day for any state-responsible prisoner held in a local jail. Potential savings would be offset by the costs incurred to house misdemeanants in jails. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail. It also funds a portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2021), the estimated total state support for local jails averaged \$37.58 per inmate, per day in FY 2020.

This bill would also affect the amount of fines collected for drug-related offenses. A Class 3 misdemeanor is punishable by a fine of up to \$500 and a Class 4 misdemeanor is punishable by a fine of up to \$250. All revenue collected from such fines is deposited into the Literary Fund. However, it is not possible to estimate either the number of convictions that may result or the amount of each fine that may be assessed under this legislation.

According to the Department of Education and the Department of Aging and Rehabilitative Services, removing felony violations of possession of a controlled substance as a barrier for eligibility for various types of employment, etc. is not expected to have a fiscal impact on the agency. The impact this provision may have on the Department of Social Services and the Department of Behavioral Health and Developmental Services is not known at this time. If further information is received from these agencies, this fiscal impact statement will be revised as necessary.

According to the Department of Health and the Department of Health Professions, this bill is not expected to have a fiscal impact on agency operations. Information on the fiscal impact on the Department of Forensic Science is not available at this time. Any fiscal impact associated with amending the definition of the term controlled substance is not known at this time.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Corrections, local and regional jails, courts, Department of Social Services, Department of Behavioral Health and Developmental Services

- 10. Technical Amendment Necessary:** No

- 11. Other Comments:** None