



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 591 Amendment in the Nature of a Substitute (Patron Prior to Substitute – Hanger)

LD#: 22105974

Date: 02/09/2022

Topic: Definition of marijuana

#### 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 552 of the Acts of Assembly of 2021, 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 address 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 modifies the definition of "marijuana" in several *Code* sections to include any substance containing a total tetrahydrocannabinol (THC) concentration that exceeds 0.3 percent while excluding specified hemp products as well as certain substances scheduled by the Board of Pharmacy in the Drug Control Act. The bill defines THC to include any naturally occurring or synthetic tetrahydrocannabinol, including its salts, isomers, or salts of isomers. In fact, according to the research, Delta-8-THC has a similar pharmacological profile to Delta -9-THC (the compound commonly known as THC that gives marijuana its psychoactive effects) but with a slightly lower psychoactive potency.<sup>1</sup> The bill also defines "total tetrahydrocannabinol concentration" for the purposes of these provisions.

The 2021 General Assembly (Special Session I) adopted legislation to establish a licensing and regulation system for cannabis cultivation facilities, cannabis manufacturing facilities, cannabis testing facilities, and retail cannabis stores, along with penalties for violation of the requirements, effective July 1, 2024. The legislation also 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

<sup>1</sup> Hazekamp, A., Fishedick, J., Llano Díez, M., Lubbe, M., and Ruhaak, R. (2010). *Development & Modification of Bioactivity*. Comprehensive Natural Products II. <https://www.sciencedirect.com/topics/pharmacology-toxicology-and-pharmaceutical-science/delta8-tetrahydrocannabinol>

plants at home for personal use. 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. 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.

Currently, 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 marijuana to a minor, involving a minor in the distribution of marijuana, and distributing near schools or other specified properties.

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### Analysis:

While the number of offenders convicted under marijuana provisions prior to July 1, 2021, can be identified, the number of individuals who may be convicted due to the expansion of existing marijuana felonies to cover additional variations of THC is not known. However, offenders affected by the proposed legislation may be sentenced similarly to those convicted under existing marijuana laws (see table below).

### Offenders Convicted of Select Marijuana Offenses (as the Most Serious Offense), FY2021

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)) <sup>1</sup>	11	72.7%	27.3%	2.0 mos.	N/A	N/A
Distribution, etc., 1 oz. or less marijuana (§ 18.2-248.1(a,1)) <sup>1</sup>	549	63.0%	37.0%	1.0 mo.	N/A	N/A
Distribution, etc., > 1 oz. to 5 lbs. marijuana (§ 18.2-248.1(a,2)) <sup>2</sup>	286	40.9%	40.6%	3.0 mos.	18.5%	1.5 yrs.
Distribution, etc., more than 5 lbs. marijuana (§ 18.2- 248.1(a,3)) <sup>2</sup>	23	39.1%	21.7%	9.0 mos.	39.1%	2.0 yrs.
Manufacture marijuana – not for personal use (§ 18.2-248.1(c)) <sup>2</sup>	7	42.9%	28.6%	8.0 mos.	28.6%	3.1 yrs.
Distribute marijuana – 3 <sup>rd</sup> or subseq. conviction (§ 18.2-248.1(d)) <sup>2</sup>	1	100.0%	0.0%	N/A	0.0%	N/A
Sell less than 1 oz. marijuana to minor (§ 18.2-255(A,i)) <sup>2</sup>	1	0.0%	0.0%	N/A	100.0%	10.0 yrs.
Sell 1 oz. or more marijuana to minor (§ 18.2-255(A,i)) <sup>2</sup>	0	N/A	N/A	N/A	N/A	N/A
Transport 5 lbs.+ marijuana into Commonwealth (§18.2-248.01) <sup>2</sup>	6	0.0%	0.0%	N/A	100.0%	3.2 yrs.

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

<sup>1</sup> Source: Supreme Court of Virginia's General District Court Case Management System, as analyzed by the Sentencing Commission

<sup>2</sup> Source: Virginia Criminal Sentencing Commission's Sentencing Guidelines Data System

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### Impact of Proposed Legislation:

**State adult correctional facilities.** By expanding existing felony provisions to cover additional variations of THC, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth.

Since the number of individuals who may be convicted as a result of the proposal cannot be determined with available data, the magnitude of the impact on prison beds 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.** Because the proposal could result in felony and misdemeanor convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

**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) are covered by the Sentencing 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.

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**Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 552 of the Acts of Assembly of 2021, 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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