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HOUSE BILL NO. 898

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact §§ 15.2-1627, 18.2-250, and 18.2-251.02 of the Code of Virginia, relating to possession of certain naturally occurring hallucinogens or psychoactive substances; civil penalty.

Patron—Adams, D.M.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-1627, 18.2-250, and 18.2-251.02 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-1627. Duties of attorneys for the Commonwealth and their assistants.

A. No attorney for the Commonwealth, or assistant attorney for the Commonwealth, shall be required to carry out any duties as a part of his office in civil matters of advising the governing body and all boards, departments, agencies, officials and employees of his county or city; of drafting or preparing county or city ordinances; of defending or bringing actions in which the county or city, or any of its boards, departments or agencies, or officials and employees thereof, shall be a party; or in any other manner of advising or representing the county or city, its boards, departments, agencies, officials and employees, except in matters involving the enforcement of the criminal law within the county or city.

B. The attorney for the Commonwealth and assistant attorney for the Commonwealth shall be a part of the department of law enforcement of the county or city in which he is elected or appointed, and shall have the duties and powers imposed upon him by general law, including the duty of prosecuting all warrants, indictments or informations charging a felony, and he may in his discretion, prosecute Class 1, 2 and 3 misdemeanors, or any other violation, the conviction of which carries a penalty of confinement in jail, or a fine of \$500 or more, or both such confinement and fine. He shall enforce all forfeitures, and carry out all duties imposed upon him by § 2.2-3126. He may enforce the provisions of subsection C of § 18.2-250 and § 18.2-268.3, 29.1-738.2, 46.2-341.20:7, or 46.2-341.26:3. He may, in his discretion, file a notice of appeal with the circuit court for the appeal of a criminal case for which he was the prosecuting attorney and he may appear and represent the Commonwealth in any criminal case on appeal before the Court of Appeals or the Supreme Court for which he was the prosecuting attorney, provided that the Attorney General consented to such appearance pursuant to § 2.2-511.

He shall also represent the Commonwealth in an appeal of a civil matter related to the enforcement of a criminal law or a criminal case for which he was the prosecuting attorney, including a petition for expungement of a defendant's criminal record, an action of forfeiture filed in accordance with the provisions of Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2, or any matter which he may enforce pursuant to this section.

§ 18.2-250. Possession of controlled substances unlawful.

A. It is unlawful for any person knowingly or intentionally to possess a controlled substance 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, or except as otherwise authorized by the Drug Control Act (§ 54.1-3400 et seq.).

Upon the prosecution of a person for a violation of this section, ownership or occupancy of premises or vehicle upon or in which a controlled substance was found shall not create a presumption that such person either knowingly or intentionally possessed such controlled substance.

(a) ~~Any~~ Except as provided in subsection C, any person who violates this section with respect to any controlled substance classified in Schedule I or II of the Drug Control Act ~~shall be~~ is guilty of a Class 5 felony, except that any person other than an inmate of a penal institution as defined in § 53.1-1 or in the custody of an employee thereof who violates this section with respect to a cannabimimetic agent is guilty of a Class 1 misdemeanor.

(b) Any person other than an inmate of a penal institution as defined in § 53.1-1 or in the custody of an employee thereof who violates this section with respect to a controlled substance classified in Schedule III ~~shall be~~ is guilty of a Class 1 misdemeanor.

(b1) Violation of this section with respect to a controlled substance classified in Schedule IV shall be punishable as a Class 2 misdemeanor.

(b2) Violation of this section with respect to a controlled substance classified in Schedule V shall be punishable as a Class 3 misdemeanor.

(c) Violation of this section with respect to a controlled substance classified in Schedule VI shall be

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59 punishable as a Class 4 misdemeanor.

60 B. The provisions of this section shall not apply to members of state, federal, county, city or town
61 law-enforcement agencies, jail officers, or correctional officers, as defined in § 53.1-1, certified as
62 handlers of dogs trained in the detection of controlled substances when possession of a controlled
63 substance or substances is necessary in the performance of their duties.

64 C. *Any person 21 years of age or older who violates this section with respect to peyote, ibogaine,*
65 *psilocybin, or psilocyn shall be punished by a civil penalty of no more than \$100. Any civil penalties*
66 *collected pursuant to this section shall be deposited into the Drug Offender Assessment and Treatment*
67 *Fund established pursuant to § 18.2-251.02.*

68 **§ 18.2-251.02. Drug Offender Assessment and Treatment Fund.**

69 There is hereby established in the state treasury the Drug Offender Assessment and Treatment Fund,
70 which shall consist of moneys received from (i) fees imposed on certain drug offense convictions
71 pursuant to § 16.1-69.48:3 and subdivisions A 10 and 11 of § 17.1-275 and (ii) *civil penalties imposed*
72 *for violations of subsection C § 18.2-250.* All interest derived from the deposit and investment of
73 moneys in the Fund shall be credited to the Fund. Any moneys not appropriated by the General
74 Assembly shall remain in the Drug Offender Assessment and Treatment Fund and shall not be
75 transferred or revert to the general fund at the end of any fiscal year. All moneys in the Fund shall be
76 subject to annual appropriation by the General Assembly to the Department of Corrections, the
77 Department of Juvenile Justice, and the Commission on VASAP to implement and operate the offender
78 substance abuse screening and assessment program; the Department of Criminal Justice Services for the
79 support of community-based probation and local pretrial services agencies; and the Office of the
80 Executive Secretary of the Supreme Court of Virginia for the support of drug treatment court programs.