



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 947

(Patron – DeSteph)

LD#: 25103468

Date: 01/17/2025

Topic: Motor vehicle stops; odor 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 2 of the Acts of Assembly of 2024, 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 amends § 4.1-1302 to authorize a law-enforcement officer to lawfully stop a motor vehicle if the odor of marijuana creates a reasonable suspicion of a violation of the law prohibiting driving under the influence of alcohol or drugs (§ 18.2-266 et seq.). Penalties for driving under the influence (DUI) range from a Class 1 misdemeanor for a first conviction up to a Class 6 felony for a third or fourth conviction (see table below).¹ Currently, in Virginia, there is no level of marijuana consumption that is per se or presumptively a violation of driving under the influence.

Violation of § 18.2-266	Statutory Penalty	Mandatory Minimum Penalty*
DUI, 1 st conviction	Class 1 misdemeanor	No mandatory minimum
DUI, 2 nd conviction within 5 years	1 month to 1 year	20 days
DUI, 2 nd conviction within 5 to 10 years	1 month to 1 year	10 days
DUI, 3 rd conviction within 5 years	Class 6 felony	6 months
DUI, 3 rd conviction within 10 years	Class 6 felony	90 days
DUI, 4 th conviction	Class 6 felony	1 year
DUI with child in vehicle		Additional 5 days

* Additional mandatory minimum penalties apply in cases involving blood alcohol content of .15 or higher. Mandatory minimum terms are cumulative and must be served consecutively but shall not exceed the statutory maximum penalty for the offense.

¹ Under current law, felony offenses defined in §§ 18.2-266/18.2-270 are eligible for the enhanced sentence credits specified in § 53.1-202.3, whereby offenders will serve a minimum of 67% of the sentence ordered by the court. The proposed legislation does not change the earned sentence credits available to offenders convicted of these felonies.

The proposal also amends several sections under Title 46.2 of the *Code* to allow a law-enforcement officer to stop a motor vehicle for certain violations, such as:

- Expired registration sticker that is less than four months past the expiration date (§ 46.2-646);
- Defective and unsafe equipment (§ 46.2-1003);
- Improper tail lights, brake lights, or supplemental high mount stop light (§§ 46.2-1013, 46.2-1014 and 46.2-1014.1);
- Failure to display headlights when required (§ 46.2-1030);
- Improper tinting, posters, stickers, decals, etc. (§ 46.2-1052);
- Suspension of objects obstructing the driver's view (§ 46.2-1054); and
- Expired inspection sticker that is less than four months from the expiration date (§ 46.2-1157).

The changes to sections in Title 46.2 remove provisions added by the 2020 General Assembly (Special Session I).

Analysis:

Existing databases do not provide sufficient detail to identify the number of new convictions that may result if the proposal is enacted. Such offenders may be sentenced similarly to those convicted under existing provisions. See table below.

Driving under the Influence of Drugs, or Alcohol and Drugs, including Marijuana, FY2019-FY2024 (Excluding Convictions for Driving under the Influence of Alcohol Alone)

Primary Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
DUI, 1 st conviction (§ 18.2-266) – Class 1 misd ^a	2,586	77.5%	22.5%	12 dys.	N/A	N/A
DUI, 2 nd conviction within 5 yrs. (§ 18.2-266) – Confinement 1 mo. to 1 yr. ^a	48	2.1%	97.9%	20 dys.	N/A	N/A
DUI, 2 nd conviction within 5 to 10 yrs. (§ 18.2-266) – Confinement 1 mo. to 1 yr. ^a	21	0%	100%	10 dys.	N/A	N/A
DUI, 3 rd conviction within 5 yrs. (§ 18.2-266) – Class 6 felony ^b	14	0%	78.6%	6 mos.	21.4%	1.0 yr.
DUI, 3 rd conviction within 10 yrs. (§ 18.2-266) – Class 6 felony ^b	17	0%	100%	3.0 mos.	0%	N/A
DUI, 4 th within 10 yrs. (§ 18.2-266 – Class 6 felony ^b	3	0.0%	0.0%	N/A.	100%	1.1 yrs.

Note: Analysis is based on cases in which the specified offense was the primary, or most serious, offense at sentencing.

Convictions for DUI under the influence of drugs or alcohol and drugs also includes the offenses with a child in the vehicle.

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

^bSource: Supreme Court of Virginia's Circuit Court Case Management System, as analyzed by the Sentencing Commission

Impact of Proposed Legislation:

State adult correctional facilities. Expanding the circumstances in which a law enforcement officer is authorized to stop, search, etc., a motor vehicle on suspicion of DUI may result in additional charges and convictions for DUI. Offenders may be charged and convicted of felony DUI if they have two prior DUI convictions. Furthermore, for offenders convicted of a fourth DUI, a one-year mandatory minimum sentence is required. Thus, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing databases do not provide sufficient detail to estimate the number of

new felony convictions that may result from enactment of the proposal; therefore, the magnitude of the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal may increase local-responsible (jail) bed space needs. The magnitude of the impact, however, cannot be quantified.

Adult community corrections resources. Because the proposal could result in 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 affected cases cannot be determined, the potential impact on community corrections cannot be estimated.

Virginia's Sentencing Guidelines. The Sentencing Guidelines do not cover violations of §§ 18.2-266/18.2-270 for driving under the influence of marijuana, other drugs or a combination of drugs and alcohol.² No immediate adjustment to the Guidelines would be necessary under the proposal. If the proposal is enacted, the Sentencing Commission in the future could conduct detailed analyses of sentencing patterns to determine the feasibility of adding drug-related DUI felonies to the Guidelines system.

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 cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2024, 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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² The current felony offenses defined in §§ 18.2-266/18.2-270 are not defined as violent under § 17.1-805(C) for the purposes of the Guidelines.