

Racial and Ethnic Impact Statement

2025 General Assembly Session

Bill number: SB 947; Citations, certain traffic offenses and odor of marijuana, exclusion of evidence

Review requested by: Chairman Surovell; Senate Committee for Courts of Justice

Date: January 31, 2025

JLARC Staff Assessment of Potential for Disproportionate Impact

SB 947 would authorize law enforcement officers to stop a motor vehicle if the odor of marijuana creates a reasonable suspicion of violating the law prohibiting driving under the influence. The bill would also remove existing provisions that prohibit law enforcement officers from stopping motor vehicles for several other minor violations.

Both of these impacts would disproportionately affect Black persons because, relative to the proportion of Black persons in Virginia's population, (1) a higher proportion of individuals charged with driving under the influence of drugs are Black; and (2) a higher proportion of individuals stopped by law enforcement and found to be in violation of one of the relevant offenses under Title 46.2 are Black.

An explanation of the JLARC staff review is included on the pages that follow.

Bill summary

SB 947 would authorize law enforcement officers to stop a motor vehicle if the odor of marijuana creates a reasonable suspicion of violation of the law prohibiting driving under the influence of alcohol or drugs (§18.2-266 et seq.). The bill would also remove existing provisions that prohibit law enforcement officers from stopping motor vehicles for several violations. These violations are:

- 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, signs, decals, stickers, etc. (§ 46.2-1052);
- Suspension of objects or alternation of vehicle obstructing the driver's view (§ 46.2-1054); and
- Expired inspection sticker that is less than four months past the expiration date (§ 46.2-1157).

SB 947 would reverse previous changes under SB 5029/HB 5058 that were passed during the 2020 Special Session I.

Impact on aggregate criminal justice outcomes

SB 947 would have two primary impacts on drivers in Virginia. Under current law, law enforcement officers cannot stop a motor vehicle based solely on the odor of marijuana. Additionally, under current law, the violations enumerated in SB 947 under Title 46.2 are not considered primary offenses, meaning law enforcement officers generally cannot stop a motor vehicle solely for one of these offenses.¹ Drivers can still be found in violation of these offenses, but only if pulled over for another reason (e.g., speeding, reckless driving, etc.). SB 947 would restore these provisions to primary offenses, meaning that that law enforcement officers could stop a motor vehicle solely for one of the listed infractions under Title 46.2. SB 947 would also authorize law enforcement officers to stop a motor vehicle if the odor of marijuana creates a reasonable suspicion

¹ Under § 46.2-646, it is currently illegal for officers to make stops for an expired registration sticker that is less than four months past the expiration date, but officers can still make stops for stickers that are more than four months past the expiration date.

of driving under the influence. SB 947 would, therefore, likely increase the number of motor vehicle stops made by law enforcement. Increasing the number of stops on the basis of these primary offenses could also increase charges for other offenses that might not otherwise occur if law enforcement did not have another reason to initiate the stop.

Evidence of disproportionate impacts on racial or ethnic subgroups

To estimate whether there would be disproportionate racial impacts if SB 947 were enacted, JLARC staff compared the racial composition of Virginia's population to (1) the racial composition of individuals charged with driving under the influence of drugs, including marijuana (§ 18.2-266); and (2) the racial composition of individuals stopped by law enforcement who were in violation of one of the relevant infractions under Title 46.2.

Black persons would likely be disproportionately affected by both impacts of SB 947, in that they are more likely to be charged with driving under the influence of drugs and are also more likely to be stopped by law enforcement and found in violation of one of the relevant infractions under Title 46.2.

SB 947 would disproportionately impact Black persons because a higher proportion of individuals charged with driving under the influence of drugs are Black relative to the proportion of Black persons in Virginia's adult population

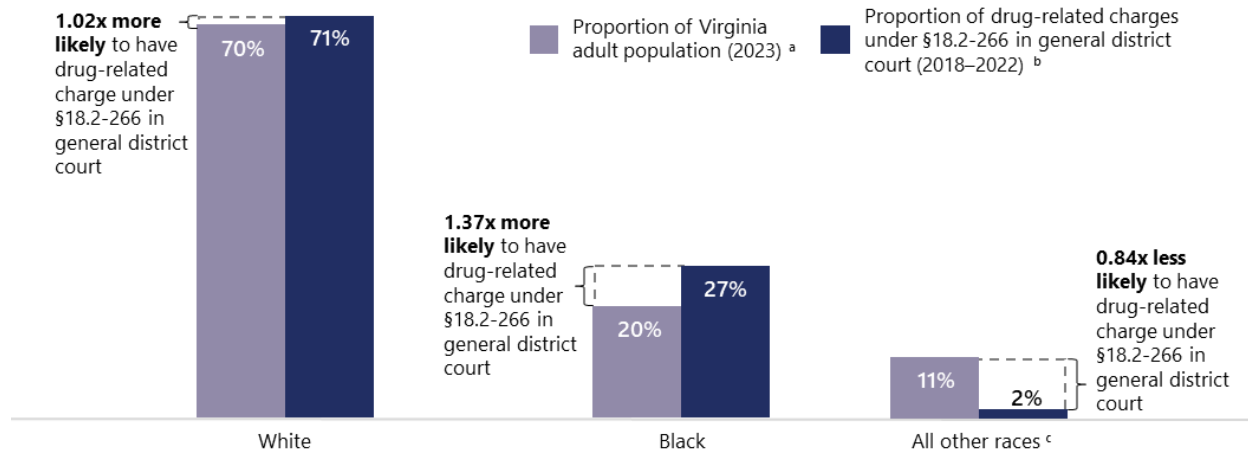
There is currently no data available to identify the number of individuals who would be stopped based on the odor of marijuana if SB 947 were enacted. JLARC staff used charges for driving under the influence of drugs as a proxy, assuming the racial breakdown of individuals stopped because of the odor of marijuana would be similar to those charged under existing provisions for driving under the influence of drugs. There is no data available to measure disproportionality for driving under the influence of drugs by ethnicity, so it is excluded from the analysis.

In general district court, individuals charged with driving under the influence of drugs are more likely to be Black relative to their proportion of Virginia's adult population. Individuals charged with driving under the influence of drugs are 1.4 times (37 percent) more likely to be Black relative to the proportion of Black persons in Virginia's adult population. This is because 27.0 percent of individuals charged with driving under the influence of drugs from 2018–2022 in general district court were Black, and 19.7 percent of Virginia adults are Black (Figure 1). White individuals are about as likely to be charged with driving under the influence of drugs relative to their proportion of Virginia's population, as 71.3 percent of individuals charged with driving under the influence of

drugs from 2018–2022 in general district court were white, and 69.7 percent of Virginia adults are white.

FIGURE 1

Black individuals are 1.4 times more likely to be charged with driving under the influence of drugs in general district court relative to Virginia’s adult population



SOURCE: JLARC staff analysis of general district court data from the Office of the Executive Secretary of the Virginia Supreme Court (2018–2022).

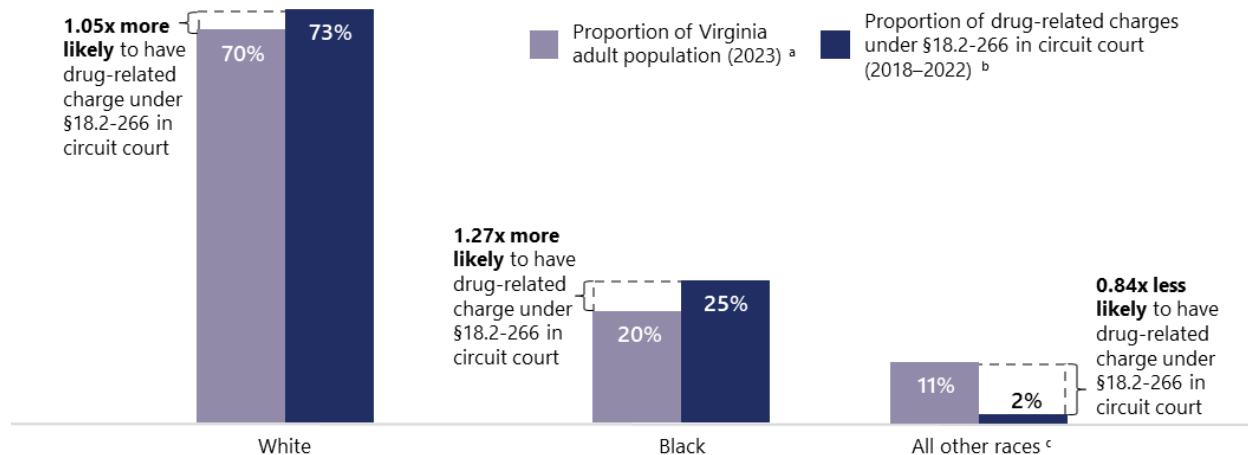
NOTE: ^a Population data from Virginia 2023 Census estimates of adult population. ^b Includes VCCs for driving under the influence of drugs and/or marijuana. ^c American Indian or Alaskan Native, Asian or Pacific Islander, Hispanic, and other/unknown race in general district court data.

In circuit court, individuals charged with driving under the influence of drugs are also more likely to be Black relative to their proportion of Virginia’s adult population. Individuals charged with driving under the influence of drugs are 1.3 times (27 percent) more likely to be Black relative to the proportion of Black persons in Virginia’s adult population. This is because 25.1 percent of individuals charged with driving under the influence of drugs from 2018–2022 in circuit court were Black, and 19.7 percent of Virginia adults are Black (Figure 2). White individuals are also slightly more likely (5 percent) to be charged with driving under the influence of drugs relative to their proportion of Virginia’s population, as 73.2 percent of individuals charged with driving under the influence of drugs from 2018–2022 in circuit court were white, and 69.7 percent of Virginia adults are white. However, the disproportionate impact on white individuals would be much less than on Black individuals.

These analyses suggest that Black individuals would be disproportionately affected by allowing the odor of marijuana to be a sufficient reason to be stopped by law enforcement under SB 947.

FIGURE 2

Black individuals are 1.3 times more likely to be charged with driving under the influence of drugs in circuit court relative to Virginia's adult population



SOURCE: JLARC staff analysis of circuit court data from the Office of the Executive Secretary of the Virginia Supreme Court (2018–2022).

NOTE: ^a Population data from Virginia 2023 Census estimates of adult population. ^b Includes VCCs for driving under the influence of drugs and/or marijuana. ^c American Indian or Alaskan Native, Asian or Pacific Islander, Hispanic, and other/unknown race in circuit court data.

SB 947 would disproportionately impact Black persons because a higher proportion of individuals stopped by law enforcement and found in violation of one of the relevant infractions under Title 46.2 are Black relative to the proportion of Black persons in Virginia's population ages 15 and older

There is currently no data available to identify the number of individuals who would be stopped solely on the basis of any one of the relevant infractions under Title 46.2 (§ 46.2-646, § 46.2-1003, § 46.2-1013, § 46.2-1014, § 46.2-1014.1, § 46.2-1030, § 46.2-1052, § 46.2-1054, and § 46.2-1157), because these are generally not primary offenses under current law and therefore cannot be the reason for the stop. However, Community Policing Data collected by Virginia State Police includes data on stops made by law enforcement, as well as the most serious violation associated with the stop. JLARC staff therefore used data on stops in which one of the relevant infractions was coded as the most serious violation, assuming the racial breakdown of these stops would be similar if changed to primary offenses under SB 947. (Individuals may have initially been stopped for a different reason, but then found in violation of one of the relevant Title 46.2 infractions as the most serious offense.)

Looking at each of the relevant infractions under Title 46.2, Black individuals are more likely to be stopped by law enforcement and found in violation of nearly all infractions relative to their proportion of Virginia's population (Table 1). Including all relevant

infractions, individuals found in violation are 1.8 times (79 percent) more likely to be Black relative to the proportion of Black persons in Virginia’s population ages 15 and older. This is because 35.2 percent of individuals found in violation of one of the relevant infractions from 2021–2023 were Black, and 19.7 percent of Virginia’s population ages 15 and older is Black (Figure 3). Conversely, 60.9 percent of individuals found in violation of one of the relevant infractions from 2021–2023 were white, and 69.4 percent of Virginia’s population ages 15 and older is white, so white persons are 0.1 times (12 percent) less likely to be found in violation of one of the relevant infractions relative to the proportion of white persons in Virginia’s population. This suggests that Black individuals would be disproportionately affected by changing the relevant violations under Title 46.2 to primary offenses under SB 947.

TABLE 1

Black individuals are more likely to be found in violation of nearly all of the relevant infractions under Title 46.2 relative to their proportion of Virginia’s population

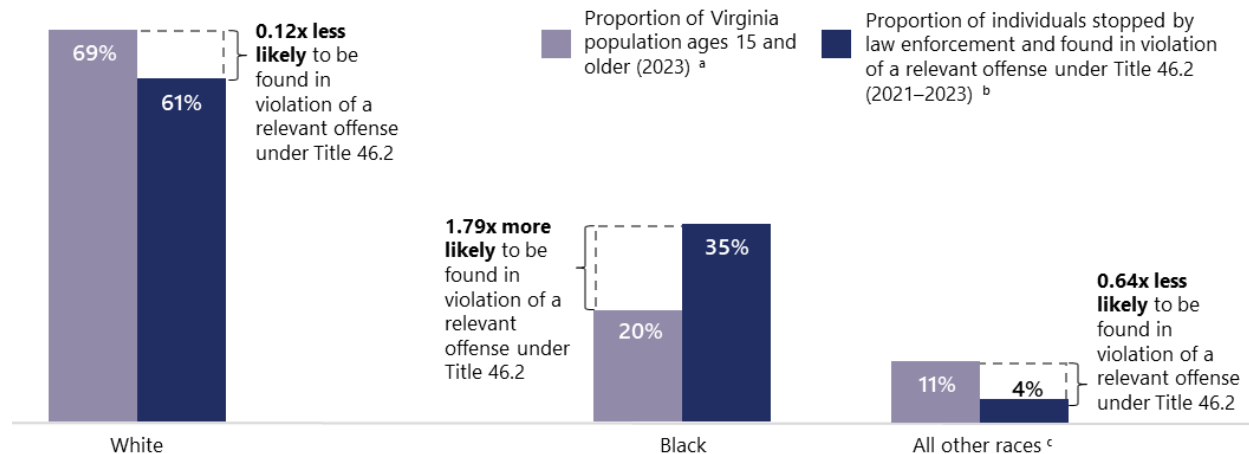
Infraction	Estimated difference of disproportionality		
	White	Black	All other races ^a
Expired registration sticker less than four months past the expiration date (§ 46.2-646)	0.15	1.89	0.66
Defective & unsafe equipment (§ 46.2-1003)	0.02	1.39	0.61
Improper tail lights (§ 46.2-1013)	0.04	1.45	0.57
Improper brake lights (§ 46.2-1014)	0.07	1.51	0.48
Improper supplemental high mount stop light (§ 46.2-1014.1)	0.09	1.34	0.03
Failure to display headlights when required (§ 46.2-1030)	0.13	1.70	0.42
Improper tinting, signs, decals, stickers, etc. (§ 46.2-1052)	0.27	2.20	0.46
Suspension of objects or alternation of vehicle obstructing the driver’s view (§ 46.2-1054)	1.13	0.17	0.50
Expired inspection sticker less than four months past the expiration date (§ 46.2-1157)	1.07	1.20	0.82
All relevant infractions	0.12	1.79	0.64

SOURCE: JLARC staff analysis of Community Policing Data (2021–2023).

NOTE: Population data from Virginia 2023 Census estimates of population ages 15 and older. Numbers in the table represent the estimated difference in the amount of disproportionality by race. For example, 0.12 means 12 percent *less likely* and 1.79 means 79 percent *more likely*. ^a Includes American Indian or Alaska Native; Asian or Native Hawaiian or Other Pacific Islander; and unknown races.

FIGURE 3

Black individuals are 1.8 times more likely to be found in violation of one of the relevant infractions under Title 46.2 relative to their proportion of Virginia's population



SOURCE: JLARC staff analysis of Community Policing Data (2021–2023).

NOTE: ^a Population data from Virginia 2023 Census estimates of population ages 15 and older. ^b Includes stops made by law enforcement where the specific violation was § 46.2-646, § 46.2-1003, § 46.2-1013, § 46.2-1014, § 46.2-1014.1, § 46.2-1030, § 46.2-1052, § 46.2-1054, or § 46.2-1157. ^c Includes American Indian or Alaska Native; Asian or Native Hawaiian or Other Pacific Islander; and unknown races.

There are smaller disproportionate impacts of SB 947 based on ethnicity. Including all relevant infractions under Title 46.2, individuals found in violation were 0.38 times (38 percent) less likely to be Hispanic and 1.04 times (4 percent) more likely to be non-Hispanic relative to their proportion of Virginia's population ages 15 and older.

Patron: Senator DeSteph

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