

## Preface

This report is produced per Item 391, Paragraph H, from Chapter 552 of the 2021 Acts of Assembly:

*H. The Secretary, in consultation with the Department of Planning and Budget, and the Secretary of Finance, as well as appropriate public safety or other agency staff, shall evaluate existing funding that has been previously authorized for the enforcement of laws related to controlled substance prohibition. The Secretary shall identify, for controlled substances which have recently been decriminalized or legalized, sources of funding that are authorized for enforcement activities, including funding dedicated to patrol, arrests, incarceration, training, or other activities, that may be saved and reallocated towards other programs. The Secretary shall report on the information required in this paragraph to the Chairs of the House Appropriations and Senate Finance and Appropriations Committees by December 1, 2021.*

The Secretary of Public Safety and Homeland Security, in consultation with the Secretary of Finance, sought input from state agencies, the Joint Legislative Review and Audit Commission, and the National Governors Association to review the impact of marijuana decriminalization and legalization on revenue streams used to enforce marijuana laws in the Commonwealth and other states.

## Background

In 2020, the General Assembly passed bipartisan legislation decriminalizing the simple possession of marijuana.<sup>1</sup> Prior to enactment, being convicted of simple possession of marijuana could result in a maximum 30-day jail sentence and a maximum fine of \$500 for a first offense, with subsequent offenses being a Class 1 misdemeanor. This legislation reduced the penalty of possessing small amounts of marijuana to a civil penalty.<sup>2</sup>

During the same session, the Joint Legislative Audit and Review Commission (JLARC) was directed to conduct a study on how Virginia should “legalize and regulate the growth, sale, and possession of marijuana.”<sup>3</sup> In its 2020 report, *Key Considerations for Marijuana Legalization*, the Commission made recommendations on how the Commonwealth could safely and equitably legalize marijuana and shared its projected impact on Virginia’s economy and criminal justice system to the General Assembly.

In 2021, the General Assembly passed legislation creating a regulatory market for marijuana sales in the Commonwealth by January 2024, overseen by the newly created Virginia Cannabis Control Authority (CCA), and legalized the simple possession and private consumption of marijuana on July 1, 2021.<sup>4 5</sup>

This report assesses the possible fiscal impact of marijuana decriminalization and legalization on enforcement, correctional, and treatment activities throughout the Commonwealth. While funding for specific purposes of law enforcement and treatment (e.g., illegal drug investigations and substance use treatment) can be identified, under the current structure, funding is not itemized for the enforcement or treatment of a specific drug type.

Due to the rapid change in the Code of Virginia and the nature of public safety funding, funding solely allocated to local and state law enforcement agencies to address controlled substance prohibition could not easily be identified at this time. Additionally, cost savings associated with the legalization of marijuana cannot be quantified until more time has lapsed; the law legalizing marijuana includes certain criminal penalties that may offset any potential savings. Research shows various states that have legalized marijuana over the past ten years faced challenges with accurately gathering data during the beginning phases of implementation. Therefore, time is required to identify potential cost and savings due to marijuana legalization on the state’s criminal justice system.

### **Due to events of the past year, multiple factors have impacted this report:**

- **COVID-19 Pandemic:** The current COVID-19 pandemic of the past year and a half has tremendously impacted the Commonwealth’s criminal justice system. In March 2020, Governor Ralph Northam issued a statewide Stay at Home order to mitigate the spread of COVID-19, resulting in lower-than-average traffic stops by state and local law enforcement.<sup>6</sup> Budget language authorized the Director of the Department of Corrections (DOC) to review those eligible with less than a year left to serve for the possibility of early release from incarceration. As of July 1, 2021, DOC approved 2,185 inmates for early release from incarceration.<sup>7</sup>

- **Statewide Shortage of Officers:** As of November 2021, there are over 330 sworn Virginia State Trooper vacancies. During the 2021 fiscal year, the Virginia State Police (VSP) experienced a 43% increase in departures of sworn officers, and over the past four years, a 40% decrease in the number of applicants. Due to high vacancy rates, troopers work extended hours to cover shifts and are being pulled from staffed districts to supplement districts with lower vacancy rates.

## **Enforcement**

Over the last two years, the General Assembly enacted legislation to fundamentally change how law enforcement officers respond to calls involving marijuana. For example, during the 2020 Special Session, the General Assembly passed legislation outlawing law enforcement from stopping and searching a person solely based on the odor of marijuana.<sup>8</sup> Legalization and decriminalization of marijuana will reduce the number of people fined or arrested by state and local law enforcement for simple possession. As previously noted, more time is required to obtain historical data to understand the full impact of marijuana legalization. Recent legislation includes penalties that could potentially offset these reductions in fines and arrests.

### **Joint Legislative Audit and Review Commission**

The Commission's 2020 report, *Key Considerations for Marijuana Legalization*, assess the impact of marijuana decriminalization and legalization may have on arrest rates and the criminal justice system in Virginia. At the time of their report, marijuana seizures represented only 0.6% of all service calls across Virginia police departments. JLARC projected the state could see an 80% decline in marijuana arrests as a result of marijuana legalization.<sup>9</sup> However, they acknowledge the uncertainty in their projections because of the multiple variables involved in the implementation of the new marijuana legislation. In its report, they state, "it is difficult to accurately predict the extent to which arrests and convictions will decline under decriminalization or legalization. Several factors can affect this, especially how Virginia implements decriminalization laws and how laws change and are enforced under legalization."<sup>10</sup>

### **Virginia**

In 2019, marijuana-related arrests included roughly 0.1% of state and local police staff time, amounting to a potential savings of anywhere between 12,000 and 43,000 hours annually.<sup>11</sup> This is equivalent to 6 to 21 law enforcement officers conducting only marijuana-related arrests for an entire year.<sup>12</sup> This is a small number compared to the over 22,000 law enforcement officers employed in the Commonwealth. However, marijuana legalization will likely amount to the reallocation of police department time and resources to other vital services.

Due to legalization, officers now require additional training to identify when a driver is under the influence of a controlled substance. In 2021, the General Assembly allocated \$1 million per year to VSP to provide Drug Recognition Expert (DRE) training to state and local law enforcement.<sup>13</sup> A DRE is a specially trained law enforcement officer who may be called to the scene when a driver is suspected to be impaired, particularly if an on-scene breathalyzer test registers at 0% Blood Alcohol Concentration (BAC). DRE training is comprised of 56 hours of classroom training and 40-60 hours of field training. At the time of legalization, only 22 officers in Virginia had DRE training. By July 2022, VSP expects to have 80 DREs in the field to assist other officers. There will be a continued

need and Virginia will likely require additional DREs to help assist in traffic stops in the coming years.

State and local law enforcement agencies will also need to allocate funding to replace their current fleet of drug detection dogs trained to smell multiple controlled substances. Drug detection dogs cannot discern the difference between marijuana and other controlled substances, and there is no humane way to untrain a dog from smelling marijuana. Agencies and departments will accrue the costs of purchasing, training, and replacing their drug detection dogs.

Virginia State Police requires over \$500,000 to replace and train much of its drug dog detection unit. VSP is presently in the middle of its transition to a new team of drug dogs. They currently have two certified drug detection dogs trained to smell all drugs and nine certified dogs trained to hit on all drugs except marijuana. VSP expects to have 20 drug detection dogs by early 2022, 16 trained to not hit on marijuana, and four that will alert to all drugs, including marijuana. To replace all 16 drug detection dogs from those that alert to marijuana to those that will not, VSP anticipates spending \$112,000 for replacement dogs (16 dogs x \$7000), \$1,200 on new equipment (i.e., training aids, collars, etc.), and \$416,000 for troopers to complete Narcotic Canine Basic School with their new dog (Trooper II salary and fringe for 13 weeks of training x 16 handlers) — for a total of \$529,200.<sup>14</sup>

### **Texas**

In late 2020, the Vincent Sederberg law firm, who specializes in cannabis law, released their report, *The Economic Benefits of Regulating and Taxing Cannabis in Texas*, to boost support for marijuana legalization in the state of Texas. However, to date, Texas has not passed legislation that would decriminalize or legalize the possession or consumption of marijuana. The firm used information from the Harris County District Attorney's Office outlining the costs incurred from misdemeanor marijuana cases.<sup>15</sup> Based on an assessment from one county, the report projects an estimated savings of \$14 million in police labor hours per year. This equates to approximately 437,948 hours spent by local law enforcement on arresting and transporting those with misdemeanor cannabis charges.<sup>16</sup> Police officers in Harris County spent an average of four hours per arrest compared to the average of two hours police officers in Virginia spend on simple possession arrests. *The report acknowledges that this saved time would allow officers to spend hours on other pressing duties in their districts.*

However, the report includes several issues that impact the accuracy of the assumptions. The primary issue with this report is it only uses data gathered from a single county in Texas. One county cannot provide sound evidence of the impact marijuana legalization would have on law enforcement in a state as large and as diverse as Texas. Secondly, the report was conducted by an independent law firm with limited access to information or data statewide to project the cost-benefit of statewide decriminalization or legalization accurately. These issues challenge the report's assertion that Texas will see the full projected saving from marijuana legalization.

### **Vermont**

In 2013, Vermont decriminalized the possession of 1 oz. or less of marijuana for those 21 years of age or older and recently passed legislation for recreational sales in late 2020. After the first year of decriminalization, Vermont saw an 80% decrease in criminal marijuana-related crimes (e.g., possession of greater than an ounce), while the number of civil infractions increased by 20% (e.g., possession of 1 oz. or less).<sup>17</sup> This increase in civil infractions is likely due to increased use of marijuana and the net-widening effect whereby law enforcement issue violations they would have previously overlooked if the only consequence was a criminal arrest. This would explain why the

total number of fines associated with marijuana infractions quadrupled in the fiscal year 2014.<sup>18</sup> Virginia is unlikely to not see a dramatic change in infractions related to marijuana possession because of recent legalization and an absence of a tiered fine structure for subsequent charges.

In 2014, law enforcement in Vermont processed 801 misdemeanor marijuana-related charges and 306 criminal marijuana-related charges. The RAND Corporation's report, *Considering Marijuana Legalization: Insights for Vermont and Other Jurisdiction*, calculated it cost the State of Vermont \$716,000 to process the misdemeanor possession charges (based on an hourly wage rate of \$24.75) and \$390,000 to process the criminal-related offenses (based on a rate of \$1,266 per offense).<sup>19</sup> While the report projects Vermont to experience a slight increase in savings and a reallocation of officer time, it also asserts that the projected saving could be allocated to other community based services and the state would ultimately not see a total saving in costs.

### **Illinois**

In a report, by the Illinois Economic Policy Institute, *the Financial Impact of Legalizing Marijuana in Illinois*, data is extrapolated from one city's experience with marijuana decriminalization to account for the whole state. The City of Chicago decriminalized the possession of fifteen grams or less of marijuana in 2012. This occurred prior to statewide marijuana decriminalization and legalization in 2016 and 2020, respectively. In the first four years of decriminalization, the city saw a decrease in marijuana-related arrests from 21,000 in 2011 to only 129 in 2016. Assuming the decrease in arrest would be mirrored by statewide decriminalization. Illinois projected cost savings of \$5.21 million for policing costs associated with marijuana.<sup>20</sup> However, since the above report derives the cost projections from one city's data it makes the financial impact to law enforcement in the State of Illinois from marijuana legalization uncertain, and it is indeterminate if the projected savings were actualized since the above report has been published.

### **Colorado**

The Colorado Division of Criminal Justice reported the state saw a decrease of 56% in the total number of marijuana-related crimes from 2012 to 2017.<sup>21</sup> After the first year of legalization, law enforcement made 84.4 fewer arrests per 100,000 population than the previous year.<sup>22</sup> Police reported using the time saved from no longer performing marijuana arrests to redirecting their efforts towards other activities. Various departments reallocated the additional time to increase crime clearance rates for open cases. This is a byproduct of marijuana legalization that can occur in Virginia, with the reallocation of over 12,000 hours that law enforcement is projected to save per year.

### **Incarceration**

Virginia's forty-one state correctional centers and sixty local and regional jails will likely see a marginal reduction in costs related to marijuana convictions. As of August 2021, close to 600 inmates are serving a sentence for marijuana-related felony charges at a DOC facility. Most of those serving time have additional charges for more serious crimes, and recent legislation will not impact their sentencing. In JLARC's report, they project the overall prison populations to decline by about 0.1%, jail offender days by about 0.3%, and state probation placements by about 0.7% when marijuana is legalized.<sup>23</sup>

Prior to legalization, most marijuana arrests in Virginia were for misdemeanor-level offenses and many of these offenders, if convicted, were incarcerated at a local or regional jail. However, due to the low number of convictions solely for misdemeanor-level marijuana offenses, the savings to localities will be minimal at most. It is important to recognize that reducing offenders in state and local facilities does not automatically signify a reduction in costs. The absence of an offender does not equate to a one-to-one reduction in the number of staff members needed to continue a state or local facility's day-to-day operations.

Tracking this information becomes more complex when evaluating the potential savings at local and regional facilities because funds to localities are funneled through the State Compensation Board. To understand the full impact of recent legislation, directives will need to be given to local governments to track costs associated with offenders convicted of low-level drug offenses. A complication with this concept is that offenders can be convicted of multiple offenses, and current court data does not discern when a person is charged with multiple offenses.

In a review of other states, Vermont is the closest statistically to Virginia. When decriminalization of marijuana was enacted, those in prison exclusively for marijuana offenses made up 0.15% of Vermont's total prison population.<sup>24</sup> They experienced, as we expect to also experience, no large increase in savings from no longer housing those convicted only for marijuana-related crimes. The Illinois report estimated that the state could reduce incarceration costs by \$10.2 million per year.<sup>25</sup> However, it is difficult to distinguish the impact of marijuana decriminalization and legalization had on the prison population in Illinois and costs because of sentencing reform legislation that was enacted shortly after statewide decriminalization. Texas also projected a cost savings of \$144 million from no longer incarcerating those convicted of marijuana-related offenses, but since the data was based on data from one county, it is unreliable to assume this would be an accurate estimate.<sup>26</sup> Lastly, both studies account for marijuana-related possession, distribution, and trafficking offenses. Under current Virginia law, those convicted of the previously listed offenses can still be charged with a felony punishable by one to ten years in prison.

## **Treatment**

Treatment services are funded through the Drug Offender Assessment and Treatment Fund, consisting of fines, fees, and costs assessed by the court for certain drug offenses. The Treatment Fund receives 55% of the \$136 fixed fee charged to those convicted of a misdemeanor drug offense in district courts and 25% of the \$296.50 fixed fee charged to those convicted of a misdemeanor drug offense in circuit courts.<sup>27 28</sup> Revenues allocated to the Fund are used to support substance use disorder (SUD) services that are offered through DOC, and state and local probation offices to offenders who have a history of drug use and is not categorized based on a particular drug the offender has used in the past. Treatment takes a holistic approach to helping an offender, and legalizing certain controlled substances would not shorten or diminish the need for treatment.

SUD services may see a reduction in funding in the coming years due to legalization. The legalization of marijuana will cause a slight reduction in the amount of funds allocated annually to the Treatment Fund. Between the fiscal year 2019 and 2021, there was a \$787,334 decrease in allocated funds. This decrease could be attributed to the decriminalization of the simple possession of marijuana in 2020. However, other factors such as policing and judicial discretion could play a role

in the decrease. If the trend continues, as expected by JLARC, then the Treatment Fund could see a projected loss of \$1–\$2.5 million annually.<sup>29</sup>

It is also important to note that a decrease in marijuana related convictions will impact other state funds that rely on fines, fees, and costs assessed by the court. Along with the Treatment Fund, money from court-related expenses is divided among the Virginia Crime Victim-Witness Fund, the Intensified Drug Enforcement Jurisdiction Fund, the Virginia Sexual and Domestic Violence Victim Fund, and multiple other funds. This loss of revenue could potentially be offset by the tax revenue of the regulated marijuana market and fees implemented by the Cannabis Control Authority. The Commonwealth will need to find new revenue streams to fund these pools that have historically relied on fees and fines from the judicial system.

## Conclusion

Currently, there is no source of annual funding specifically dedicated to the enforcement, incarceration, and treatment of those involved in committing marijuana-related offenses. As JLARC states in its 2020 report, it is not currently feasible to determine potential savings and costs due to the multiple variables involved with implementing marijuana legalization. While many states who have legalized marijuana experienced or anticipated cost savings, it is important to note that these savings are distributed across all state and local jurisdictions and is not confined to a specific fund. There needs to be more time and consideration to fully understand the financial impact of marijuana decriminalization and legalization on Virginia's criminal justice system. Moreover, the legalization of a controlled substance does not reduce the need for funds allocated to state and local agencies to provide treatment services to constituents.



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- <sup>1</sup> House of Delegate, Legislature. *House Bill 972*. Virginia General Assembly. 21 May. 2020.  
<https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB972>.
- <sup>2</sup> Virginia Legislative Information Services. (n.d.). *Code of Virginia*. § 18.2-248.1. Penalties for sale, gift, distribution or possession with intent to sell, give or distribute marijuana. Retrieved from <https://law.lis.virginia.gov/vacode/title18.2/chapter7/section18.2-248.1/>.
- <sup>3</sup> House of Delegate, Legislature. *House Joint Resolution 130*. Virginia General Assembly. 4 Mar. 2020.  
<https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=hj130>.
- <sup>4</sup> See <https://www.cannabis.virginia.gov/> for further information on marijuana legalization.
- <sup>5</sup> House of Delegate, Legislature. *House Bill 2312*. Virginia General Assembly. 7 April. 2021.  
<https://lis.virginia.gov/cgi-bin/legp604.exe?212+sum+HB2312>.
- <sup>6</sup> Virginia, Office of Governor Ralph Northam. *Executive Order 53: Temporary Restrictions on Restaurants, Recreational, Entertainment, Gatherings, Non-essential Retail Businesses, and Closure of K-12 Schools due to Novel Coronavirus (COVID-19)*. 23 March 2020.  
[https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-53-Temporary-Restrictions-Due-To-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-53-Temporary-Restrictions-Due-To-Novel-Coronavirus-(COVID-19).pdf).
- <sup>7</sup> Kinney, Lisa. *Pandemic-Related Early Release of State Inmates Coming to an End as Authority Expires*. Virginia Department of Corrections. 16 June 2021.  
<https://vadoc.virginia.gov/news-press-releases/2021/pandemic-related-early-release-of-state-inmates-coming-to-an-end-as-authority-expires/>.
- <sup>8</sup> Senate of Virginia, Legislature. *Senate Bill 5029*. Virginia General Assembly. 9 Nov. 2021.  
<https://lis.virginia.gov/cgi-bin/legp604.exe?202+sum+SB5029>.
- <sup>9</sup> Joint Legislative Audit and Review Commission (JLARC). *Key Considerations for Marijuana Legalization*. 2020. <http://jlarc.virginia.gov/landing-2020-marijuana-legalization.asp>. 14.
- <sup>10</sup> JLARC. *Key Considerations of Marijuana Legalization*. 2020. 13.
- <sup>11</sup> JLARC. *Key Considerations of Marijuana Legalization*. 2020. 7.
- <sup>12</sup> JLARC. *Key Considerations of Marijuana Legalization*. 2020. 173.
- <sup>13</sup> House of Delegates, Legislature. *House Bill 1800*. Virginia General Assembly. 7 April. 2021.  
<https://lis.virginia.gov/cgi-bin/legp604.exe?212+sum+HB1800>.

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- <sup>14</sup> Narcotic Canine Basic Schools are 13 weeks long, consisting of 20 hours of classroom instruction and 500 hours of practical exercises. Troopers are given lectures on canine grooming and care, kennel and canine maintenance, first aid, report writing, and case law. Canines beginning a school must be introduced to the odors they will be expected to find and taught to respond appropriately. The canine's final response indicating the odor of narcotics is to sit at the odor. The canine handlers must learn to "read" their canines, which means to interpret their body language as they work through search sequences. The canines and canine handlers will progress through training, starting with simple finds and ending with simulated traffic stops around the Richmond area exposing them to various working conditions and distractions. Before the completion of the school each team must satisfactorily complete a certification exam; exam tests the canine and its handler's skills and ensures the canines are reliable and the teams are capable of properly conducting searches.
- <sup>15</sup> Harris County, Texas has a population of 4,713,325 roughly half the size of the whole population of the Commonwealth of Virginia
- <sup>16</sup> Vincent Sederberg, LLP. *The Economic Benefits of Regulating and Taxing Cannabis in Texas: An Analysis of Potential New Revenue, Job Growth, and Savings*. 2020.  
[https://vicentesederberg.com/img/content/downloads/Economic\\_Benefits\\_of\\_Regulating\\_and\\_Taxing\\_Cannabis\\_in\\_Texas\\_Vicente\\_Sederberg\\_Oct2020.pdf](https://vicentesederberg.com/img/content/downloads/Economic_Benefits_of_Regulating_and_Taxing_Cannabis_in_Texas_Vicente_Sederberg_Oct2020.pdf).
- <sup>17</sup> Caulkins, Jonathan P., Beau Kilmer, Mark A. R. Kleiman, Robert J. MacCoun, Gregory Midgette, Pat Oglesby, Rosalie Liccardo Pacula, and Peter Reuter. *Considering Marijuana Legalization: Insights for Vermont and Other Jurisdictions*. 2015.  
[https://www.rand.org/pubs/research\\_reports/RR864.html](https://www.rand.org/pubs/research_reports/RR864.html).
- <sup>18</sup> Caulkins, et al. *Considering Marijuana Legalization*. 21.
- <sup>19</sup> Caulkins, et al. *Considering Marijuana Legalization*. 23.
- <sup>20</sup> Manzo, Frank, Jill Manzo, and Robert Bruno. *The Financial Impact of Legalizing Marijuana in Illinois*. 9 Nov. 2018, [illinoisepi.files.wordpress.com/2018/11/ilepi-pmcr-financial-impact-of-legalizing-marijuana-in-illinois-final.pdf](http://illinoisepi.files.wordpress.com/2018/11/ilepi-pmcr-financial-impact-of-legalizing-marijuana-in-illinois-final.pdf).
- <sup>21</sup> Colorado Department of Public Safety – Division of Criminal Justice. *Impacts of Marijuana Legalization in Colorado: A Report Pursuant to Senate Bill 13-283*. 2018.  
[https://cdpsdocs.state.co.us/ors/docs/reports/2018-SB13-283\\_Rpt.pdf](https://cdpsdocs.state.co.us/ors/docs/reports/2018-SB13-283_Rpt.pdf).
- <sup>22</sup> Makin, David A., Dale W. Willits, Guangzhen Wu, Kathryn O. DuBois, Ruibin Lu, Mary K. Stohr, Wendy Koslicki, Duane Stanton, Craig Hemmens, John Snyder, and Nicholas P. Lovrich. *Marijuana Legalization and Crime Clearance Rates: Testing Proponent Assertions in Colorado and Washington State*. *Police Quarterly*, vol. 22, no. 1, Mar. 2019, pp. 31–55, doi:10.1177/1098611118786255.
- <sup>23</sup> JLARC. *Key Considerations of Marijuana Legalization*. 2020. 18.

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<sup>24</sup> Caulkins, et al. *Considering Marijuana Legalization*. 22.

<sup>25</sup> Manzo, et al. *The Financial Impact of Legalizing Marijuana in Illinois*. 3.

<sup>26</sup> Vincent Sederberg, LLP. *The Economic Benefits of Regulating and Taxing Cannabis in Texas*. 3.

<sup>27</sup> Virginia Legislative Information Services. (n.d.). *Code of Virginia*. § 16.1-69.48:1. Fixed fee for misdemeanors, traffic infractions and other violations in district court; additional fees to be added. Retrieved from <https://law.lis.virginia.gov/vacode/16.1-69.48:1/>.

<sup>28</sup> Virginia Legislative Information Services. (n.d.). *Code of Virginia*. § 17.1-275.8. Fixed drug misdemeanor fee. Retrieved from <https://law.lis.virginia.gov/vacode/17.1-275.8/>.

<sup>29</sup> JLARC. *Key Considerations of Marijuana Legalization*. 2020. 21.