

Virginia Marijuana Legalization Work Group As Required by 2020 Acts of Assembly Chapters 1285 & 1286

Full Work Group—Meeting One July 31, 2020 9:30 AM

Virtual Meeting—Register Here:

https://covaconf.webex.com/covaconf/onstage/g.php?MTID=ecfbd4e466dbf585e7c5fff9f0b5664ea

Agenda

- 1. Public Meeting/FOIA Overview Justin Bell, Office of the Attorney General
- 2. Introductions facilitated by Bettina Ring, Secretary of Agriculture & Forestry
- 3. Cannabis Law Overview Dave Cotter, Dept. of Criminal Justice Services
- 4. Work Group Charge Jacquelyn Katuin, Policy Advisor, Sec. of Public Safety & Homeland Security
- 5. Proposed Work Group Structure Brad Copenhaver, Deputy Secretary of Agriculture & Forestry
- 6. Group Discussion facilitated by Bettina Ring, Secretary of Agriculture and Forestry
- 7. Finalize Work Plan
- 8. Public Comment (2 min per person)
- 9. Adjournment

To pre-register for public comment, please indicate that you would like to speak when registering for the WebEx meeting. The host of the meeting will call on each speaker in the order in which they registered to speak for 2 minutes.

After we have gone through each pre-registered commenter and if any time remains, we will also hear from members of the public who may wish to speak but did not pre-register. If you did not pre-register but would like to speak, use the "Raise Hand" function in the WebEx platform; or if you are calling into the meeting from a telephone, press *3.

Work Group Membership (some members will be sending designees to meetings):

- •Bettina Ring, Secretary of Agriculture and Forestry
- •Aubrey Layne, Secretary of Finance
- •Daniel Carey, Secretary of Health and Human Resources
- •Brian Moran, Secretary of Public Safety and Homeland Security
- •Mark Herring, Attorney General
- •Craig Burns, Tax Commissioner
- •Richard Holcomb, DMV Commissioner
- •Jewel Bronaugh, VDACS Commissioner
- •Caroline Juran, Executive Director of the Board of Pharmacy
- •Fabrizio Fasulo, VCU Wilder School Director for the Center for Urban and Regional Analysis
- •Kristen Howard, State Crime Commission
- •Jeff Haislip, Va. Association of Commonwealth's Attorneys
- •Jenn Michelle Pedini, Executive Director of Virginia NORML
- •Travis Hill, Virginia ABC
- •Ngiste Abebe, Director of Public Policy, Columbia Care
- •Sam Caughron, Charlottesville Wellness Center Family Practice
- •Michael Carter, Jr., 11th generation farmer
- •Nour Alamiri, Chair of Community Coalitions of Virginia
- •James Thompson, Virginia Center of Addiction Medicine
- •Jimmy Christmas, River City Integrative Counseling
- •Jennifer Faison, Executive Director Va Assn of Community Services Boards



Virginia Marijuana Legalization Work Group

As required by 2020 Acts of Assembly Chapters 1285 & 1286

First Meeting July 31, 2020

AGENDA



Open Meeting & FOIA Training I Proposed Work Group Structure

Group Member Introductions 2 6 Group Discussion

Cannabis Law Overview 3 7 Finalize Work Plan

Work Group Charge Overview 4 8 Public Comment



Open Public Meetings and Freedom of Information Act Training

Justin Bell, Office of the Attorney General



Group Member Introductions

Bettina Ring,
Secretary of Agriculture and Forestry

Work Group Membership



Bettina Ring, Secretary of Agriculture and Forestry

Aubrey Layne, Secretary of Finance Daniel Carey, Secretary of Health and Human Resources Brian Moran, Secretary of Public Safety and Homeland Security

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James Thompson, Virginia Center of Addiction Medicine Jimmy Christmas, River City Integrative Counseling Jennifer Faison, Executive Director Va Assn of Community Services Boards *Note: some members will be sending designees to meetings



Cannabis Law Overview

David Cotter,
Department of Criminal Justice Services

Marijuana Decriminalization Virginia's 10-Year Journey



Marijuana Decriminalization Related Issues

Medical marijuana

- 2015: Virginia allowed medical marijuana (CBD or THC-A oil)-Va. Code § 18.2-250.1-to treat intractable epilepsy
- 2018: Expanded for treatment of all medical conditions
- 2017: Creation, licensure, and regulation of pharmaceutical processors to produce CBD and THC-A oil in Virginia
- 2020: Immunity replaces affirmative defense.

Hemp production

- 2015: Virginia allowed industrial hemp production for research purposes
- 2019: Virginia allowed commercial hemp production



Marijuana Decriminalization Definition

Decriminalization

- Possession of small amounts of marijuana (i.e., personal use) punished by civil penalties
- No possibility of arrest or incarceration
- No criminal record or collateral consequences
- The sale, production, etc., of marijuana remains subject to criminal penalties

Marijuana Decriminalization Virginia's Former Law-Simple Possession

- Simple Possession of Marijuana-Va. Code § 18.2-250.1
 - 1st Offense: Unclassified misdemeanor
 - Maximum sentence: 30 days
 - Maximum fine: \$500
 - Eligible for 1st offender status where charge can be deferred and dismissed upon compliance with court-ordered conditions
 - 2nd or Subsequent Offense: Class 1 misdemeanor
 - Maximum sentence: 12 months
 - Maximum fine: \$2,500



Marijuana Decriminalization Virginia Former Law-Simple Possession

- Virginia did not define simple possession by a specific threshold amount
- The standard was Personal Use (i.e., no intent to sell, distribute, etc.)
 - Possession of a small amount creates an inference of personal use, but each case is fact-specific
 - Rice v. Commonwealth, 16 Va. App. 370 (1993) (.74 oz. of marijuana;
 conviction for possession with intent to distribute reversed)
 - Hooks v. Commonwealth, No. 0231-04-2 (2005) (.28 oz. of marijuana;
 conviction for possession with intent to distribute sustained)



Marijuana Decriminalization and Legalization Arrest and Conviction Data

- CY07-CY16
 - 133,256 arrests for simple possession of marijuana
 - 82% (109,676) male
 - 51% (68,496) persons aged 18 to 24
 - 47% (62,065) Black/African American
 - 52% (69,469) White
- FY08-FY17
 - 175,542 first offense possession charges filed in general district court
 - 55% (97,147) convictions

Source: Virginia State Crime Commission, Decriminalization of Marijuana (2017)

- HB 1134 (Morgan)
 - 2010: Virginia's first decriminalization bill
- Many of the provisions in subsequent decriminalization bills can be traced to HB 1134
 - Civil penalty (\$500) for simple possession
 - No requirement for substance abuse screening as a condition of a suspended sentence (except for minors)
 - Eliminate six-month driver's license forfeiture (except for minors)



- Other HB 1134 Provisions
 - Lowered the criminal penalties for possession with intent to sell, distribute, etc., including:
 - Penalties for distribution to a minor
 - Penalties for manufacture or distribution at or near school property
 - Rebuttable presumption that possession of no more than five marijuana plants was for personal use
 - Eliminated the penalty for possession of drug paraphernalia used with marijuana
 - Lowered the penalty for distribution of drug paraphernalia used with marijuana to minor

- HB 1443 (2011, Morgan)
- Removed all provisions dealing with distribution and paraphernalia
- What remained were the core elements found in most subsequent decriminalization bills
 - Civil penalty for simple possession
 - Removal of other consequences, e.g., driver's license forfeiture
 - Retain certain penalties for possession by minors



- Increased Legislative Activity 2015-2019
 - 2015: SB 686 (Ebbin)
 - 2016: HB 997 (Levine); HB 1074 (Heretick); SB 104 (Ebbin)
 - 2017: HB 1906 (Heretick); SB 908 (Lucas); SB 1269 (Ebbin)
 - 2018: HB 1063 (Heretick); SB 111 (Ebbin); SB 954 (Norment)
 - 2019: HB 2079 (Heretick); HB 2644 (Kory); HB 2370 (Herring); SB 997 (Ebbin)

- 2019 also saw the introduction of two legalization bills
 - HB 2373 (Carter); HB 2371 (Heretick)

Marijuana Decriminalization 2020 Legislation

- Legislative Critical Mass
- Seven decriminalization bills
 - HB 265 (Heretick); HB 301 (Levine); HB 481 (Kory); HB 972
 (Herring); HB 1507 (Carroll Foy); SB 2 (Ebbin); SB 815 (Morrissey)
- Two legalization bills
 - HB 87 (Carter); HB 269 (Heretick)

• HB 972 and SB 2 became law on July 1, 2020



- Civil penalty for simple possession
 - **\$25**
 - Offense charged on summons, i.e., a person will be issued a prepayable ticket
 - Penalties deposited into the Drug Offender Assessment and Treatment Fund
 - Prosecuted by the Commonwealth's attorney or the county or city attorney

- Presumption of simple possession
 - Possession of 1.0 oz. or less of marijuana is presumed to be for personal use

- Effectively creates a de facto threshold amount for decriminalization
 - Though prosecution for possession with intent to distribute still possible

- Criminal provisions
 - Changes felony threshold amount for sale, distribution, or possession with intent to sell or distribute marijuana
 - More than 1.0 oz. is a Class 5 felony
 - Previously, the threshold was 0.5 oz.
 - The increase is consistent with the presumption that possession of 1.0 oz. or less of marijuana is for person use
 - Includes hashish oil in the definition of marijuana

- Eliminates requirement for substance abuse screening as a condition of a suspended sentence (except for minors)
- As passed the General Assembly, HB 972 and SB 2 eliminated the mandatory six-month driver's license suspension for simple possession (except for minors)
 - License suspension provisions removed by Governor's amendments
 - Governor had already signed legislation (HB 909 and SB 513) which eliminated license suspensions for all drug offenses, including simple possession



- Criminal Records and History
 - Civil penalties for simple possession will not go on a person's criminal record
 - If the offense occurred while in operation of a motor vehicle, the Department of Motor Vehicles will be notified for commercial driver's licenses purposes
 - Prior criminal convictions for simple possession will be sealed and only accessible for limited purposes
 - Records of summonses for simple possession that are dismissed or where the person is acquitted are eligible for expungement

Marijuana Decriminalization Other States That Have Decriminalized Possession

- Connecticut
- Delaware
- Hawaii
- Maryland
- Minnesota
- Mississippi
- Missouri

- Nebraska
- New Hampshire
- New Mexico
- New York
- North Carolina
- North Dakota
- Ohio
- Rhode Island

Marijuana Decriminalization Common Provisions

- Threshold amounts
- Civil penalties/Fines
- Not subject to arrest
- No criminal record
- Community service/Drug treatment
- Prohibition on possession in certain locations
- Minors



Marijuana Decriminalization Threshold Amounts

- CT: < 0.5 oz.
- DE: \leq 1.0 oz.
- HI: \leq 3.0 g. (\approx 0.1 oz.)
- MD: < 10.0 g. (≈ 0.35 oz.)
- MN: \leq 42.5 g. (\approx 1.5 oz.)
- MS: \leq 30.0 g. (\approx 1.05 oz.)
- MO: \leq 10.0 g. (\approx 0.35 oz.)
- NE: ≤ 1.0 oz.

- NH: ≤ 0.75 oz.
- NM: ≤ 0.5 oz.
- NY: ≤ 1.0 oz.
- NC: ≤ 0.5 oz.
- ND: < 0.5 oz.
- OH: < 100.0 g. (≈ 3.5 oz.)
- RI: ≤ 1.0 oz.
- VA: ≤ 1.0 oz.

Marijuana Decriminalization Maximum Civil Penalties/Fines-First Offense

• CT: \$150*

• DE: \$100

• HI: \$130

• MD: \$100*

• MN: \$300

• MS: \$250^

• MO: \$500*^

• NE: \$300*^

DCJS Virginia Department of Criminal Justice Services www.dcjs.virginia.gov

• NH: \$100*

• NM: \$50

• NY: \$50

• NC: \$200*^

• ND: \$1,000*^

• OH: \$150

• RI: \$150*^

• VA: \$25

* Fines increase for subsequent offenses

^ Jail time possible for subsequent offenses

Marijuana Legalization Definition

- Legalization
 - Recreational use of marijuana is legal
 - Commercial distribution and production regulated by the state

Marijuana Legalization 2020 Studies

- HB 972 and SB 2 Secretaries' Workgroup
 - Agriculture and Forestry, Finance, Health and Human Resources, and Public Safety and Homeland Security
 - Examine the (i) feasibility of legalizing sale and personal use,
 (ii) potential revenue impact, (iii) necessary legal framework,
 and (iv) health effects of marijuana use
 - Report due November 30, 2020

Marijuana Legalization 2020 Studies

- Joint Legislative Audit and Review Commission
 - Make recommendations for how to legalize and regulate the growth, sale, and possession of marijuana by July 1, 2022
 - Recommendations should address (i) how to maintain and expand the medical marijuana program, (ii) protections for minors and how to identify and prosecute those who sell marijuana without legal authority, (iii) creation of strong testing and labeling, (iv) how to provide equity and economic opportunity for every community, especially those disproportionately impacted by prohibition drug policies, and (v) how to provide for reinvestment in communities most impacted by marijuana prohibition
 - Report due December 1, 2020

Marijuana Legalization States That Have Legalized Recreational Marijuana

- Alaska
- California
- Colorado
- D.C.
- Illinois
- Maine

- Massachusetts
- Michigan
- Nevada
- Oregon
- Vermont
- Washington

Source: National Conference of State Legislatures: http://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx

Marijuana Legalization Common Provisions

- Regulatory scheme for cultivation and retail sale
- Recreational use legal
 - Lawfully produced marijuana
 - Threshold amounts
- Taxation
- Form of marijuana
- Prohibition on possession in certain locations
- Criminal penalties for possession and distribution of non-retail marijuana
- Minors



Marijuana Legalization Legal Amounts

- AK: ≤ 1 oz.; 6 plants
- CA: ≤ 28.5 g.; 6 plants
- CO: ≤ 1.0 oz.; 6 plants
- DC: ≤ 2.0 oz.; 6 plants
- IL: ≤ 30.0 g.
- ME: ≤ 2.5 oz.; 3 plants

Marijuana Legalization Minors

- Recreational marijuana use limited to persons aged 21 and older
 - Typically fines for persons aged 18-20
 - Fine may match the penalty for underage alcohol possession (e.g., CO: \$100; OR: \$1,000)
 - Minors usually subject to drug education/screening or community service

Marijuana Legalization DUI

- Virginia and all other states allow for a conviction for DUI if a person is driving under the influence of a controlled substance or marijuana
- Four states have limits on the amount of marijuana that can be in a person's blood
 - CO: ≥ 5 ng. delta-9-THC per ml of whole blood
 - IL: ≥ 5 ng. delta-9-THC per ml of whole blood or ≥ 10 ng. delta-9-THC per ml of other bodily substance
 - NV: ≥ 2 ng. delta-9-THC per ml of whole blood or ≥ 5 ng. marijuana metabolite per ml of whole blood
 - OH: ≥ 5 ng. delta-9-THC per ml of whole blood or ≥ 10 ng. delta-9-THC per ml of urine

Marijuana Legalization 2020 Virginia Legislation

• HB 87 (Carter) & HB 269 (Heretick)

 Contain many of the provisions common to marijuana legalization laws in other states



- The Board of Agriculture and Consumer Services will license and regulate:
 - Marijuana cultivation facilities
 - Marijuana manufacturing facilities
 - Marijuana testing facilities
 - Retail marijuana stores
- All legal marijuana purchased and consumed in Virginia must come through a licensed entity
- Localities can opt to prohibit any licensees or to allow consumption at retail stores



- Taxation on retail marijuana sales
 - HB 269: 9.7%
 - Retail Marijuana Education Support Fund (33%)
 - General fund (67%)
 - HB 87: 10%
 - Veterans Treatment Fund (first \$20 million of tax)
 - Tax receipts in excess of \$20 million
 - Localities in which the businesses operate (30%)
 - General fund for the state's share of Standards of Quality basic aid payments (35%)
 - Commonwealth Mass Transit Fund (35%)



- Legal amounts
 - HB 269: No amount limit; 3 plants home cultivation
 - HB 87: ≤ 10 oz. (2.5 oz. on their person); 12 plants home cultivation

- Various civil and criminal penalties for
 - Unlawful possession or distribution of retail marijuana
 - Possession or distribution of nonretail marijuana
 - Distribution of marijuana to minors

- Possession of marijuana by person under 21
 - HB 269: civil penalty
 - \$50 first offense
 - \$100 second offense
 - \$250 third or subsequent offense
 - HB 87: civil penalty
 - \$100 if < 2.5 oz. or 12 plants
 - \$500 if \geq 2.5 oz. or 12 plants

- Consume marijuana in a motor vehicle
 - Class 4 misdemeanor
- Consumption in public
 - Civil penalty
 - \$50 first offense
 - \$100 second offense
 - \$250 third or subsequent offense
- Consumption on school property
 - Class 2 misdemeanor



- Licensure and regulation of cultivation and retail stores
 - Taxation of retail marijuana sales
- All legal marijuana purchased or consumed must come from a licensed entity
- Consumption by persons under 21 prohibited
- Various civil and criminal penalties for
 - Unlawful possession or distribution of retail marijuana
 - Possession or distribution of nonretail marijuana
 - Distribution of marijuana to minors
 - Consumption in public, a motor vehicle, or on school property





Jacquelyn Katuin,
Policy Advisor, Office of the Secretary of Public
Safety and Homeland Security



That the Secretaries of Agriculture and Forestry, Finance, Health and Human Resources, and Public Safety and Homeland Security shall convene a work group to <u>study the impact on the Commonwealth</u> of legalizing the sale and personal use of marijuana. The work group shall consult with the Attorney General of Virginia, the Commissioner of the Department of Taxation, the Commissioner of the Department of Motor Vehicles, the Commissioner of the Virginia Department of Agriculture and Consumer Services, the Executive Director of the Board of Pharmacy, the Director for the Center for Urban and Regional Analysis at the Virginia Commonwealth University L. Douglas Wilder School of Government and Public Affairs, the Virginia State Crime Commission, the Virginia Association of Commonwealth's Attorneys, the Executive Director of Virginia NORML, a representative of the Virginia Alcoholic Beverage Control Authority, a representative of a current manufacturer of medical cannabis in Virginia, a medical professional, a member of a historically disadvantaged community, a representative of a substance abuse organization, and a representative of a community services board. In conducting its study, the work group shall review the legal and regulatory frameworks that have been established in states that have legalized the sale and personal use of marijuana and shall examine the feasibility of legalizing the sale and personal use of marijuana, the potential revenue impact of legalization on the Commonwealth, the legal and regulatory framework necessary to successfully implement legalization in the Commonwealth, and the health effects of marijuana use. The work group shall complete its work and report its recommendations to the General Assembly and the Governor by November 30, 2020.



In conducting its study, the work group shall review:

- I. the legal and regulatory frameworks that have been established in states that have legalized the sale and personal use of marijuana, and
- 2. the feasibility of legalizing the sale and personal use of marijuana,
- 3. the potential revenue impact of legalization on the Commonwealth,
- 4. the legal and regulatory framework necessary to successfully implement legalization in the Commonwealth, and
- 5. the health effects of marijuana use.



Not determining whether or not Virginia SHOULD legalize the sale and personal use of marijuana

Rather, the group is answering specific policy questions posed by the General Assembly related to *HOW* Virginia would or could legalize if the Commonwealth chooses to do so and the *FACTS* about the feasibility of regulating, the fiscal impacts, and the health effects



Organization and Schedule Recommendations

Brad Copenhaver,
Deputy Secretary of Agriculture and Forestry

Proposed Subgroups



Fiscal and Structural

Legal and Regulatory

Health Impacts

Groups divided up based on policy questions

Scope and topic recommendations will follow but are open for discussion among work group and each subgroup

Membership recommendations will also follow, but any work group member can serve on whichever and as many subgroups as they choose

Subgroups

Fiscal and Structural

Legal and Regulatory

Health Impacts

Proposed Scope

- Feasibility of legalizing the sale and personal use of marijuana
 - Potential revenue impact to the Commonwealth
- Legal and regulatory frameworks of other states
- Framework necessary to implement in Va.

Health effects of marijuana use, including both personal and public health

Potential Topics

- Regulatory

 authority and
 responsibility of so
- Feasibility of setting up regulatory scheme
- Market size and state revenue projections

- Criminal justice
- Employment and workforce
- Social services
- Driving
- Growing/production requirements

- Physical health
- **♦** Behavioral health
- **♦** Public health

Subgroups

Fiscal and Structural

Legal and Regulatory

Health Impacts

Government Members

State

- Sec. of Pub. Safety
- Sec. of Ag & Forestry **ABC**

Sec. of Finance

- **VDACS** TAX
- **Pharmacy Board**
- Wilder School Center for Urban and Reg. Analysis
- Rep. of Medical Cannabis Manufacturer

DMV State Crime Commission

Association of

Attorneys

Va. NORML

Commonwealth's

Rep. of Historically

Disadvantaged Community

Sec. of Pub. Safety

Attorney General

Pharmacy Board

Sec. of Health

Stakeholder **Members**

Potential

State

Government

Potential

- Office of Diversity, Equity, & Inclusion
- Sec. of the Commonwealth
- Sec. of Commerce & Trade
- **Department of Planning and Budget**
- Office of Diversity, Equity, & Inclusion **State Police Dept. of Forensic Science**
- **Dept. of Social Services**
- Va. Employment Commission
- Office of the Chief Workforce Advisor

Services Board

Office of Diversity, Equity, &

Rep. of Substance Abuse

Medical Professional

Rep. of Community

Inclusion

Organization

- Dept. of Health
- **Dept. of Medical Assistance**

Youth

- Services Dept. of Behavioral Health and Developmental Svcs.
- **Dept. of Social Services**
- Va. Foundation for Healthy

Partners

Proposed Engagement Structure

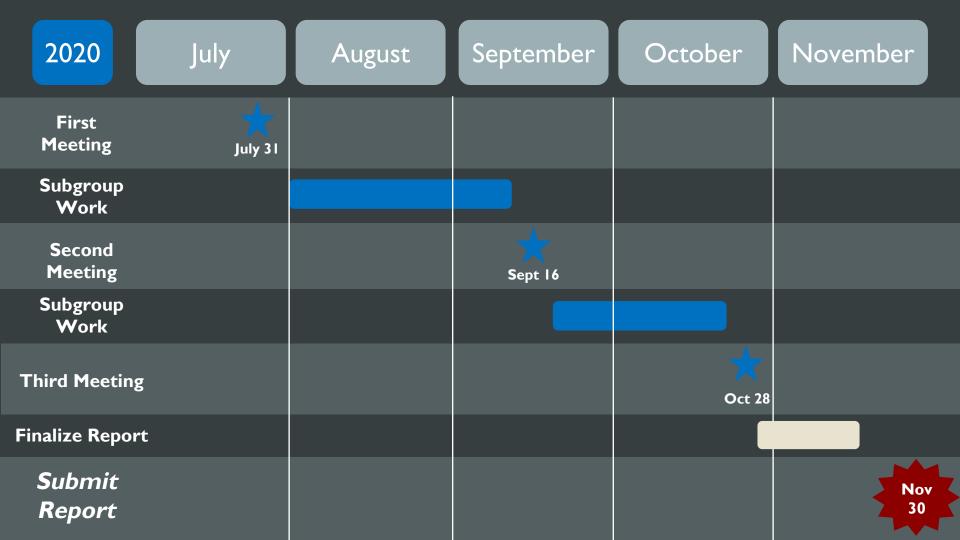


As many subgroup meetings as the each feels is necessary, but anticipate 3-4 for each

Use at least one entire meeting to solicit technical expertise and input from interested stakeholders

Open meetings with structured public comment at each

Each subgroup makes recommendations to the work group for discussion about inclusion in final report





Open Discussion about Proposed Structure and Timeline

Facilitated by Secretary Ring



Public Comment

2 Minutes for Each Commenter

Pre-registered Commenters First

Additional Public Comment After if Time Allows Use "Raise Hand" Feature to get into the Queue Or if Calling in, Press *3

Please Begin by Stating Your Full Name and Organization



Adjournment