



March 3, 2021

Re: Improving SB 1406/ HB 2312 to avoid re-criminalization of small-scale possession

Dear Governor Northam,

On behalf of the nation's largest cannabis policy reform organization, the Marijuana Policy Project, we are writing to express our appreciation for your advocacy in support of Virginia's adult-use cannabis legalization bills. We are very pleased that the General Assembly has passed SB 1406 and HB 2312, identical bills that will replace prohibition with sensible regulation while emphasizing social equity and expungement of criminal records.

As you consider whether to sign the legislation as-is or request amendments, there is one troubling detail that we believe has been overlooked by the General Assembly, and we would like to bring it to your attention.

Although we believe most of the bills' criminal justice provisions are reasonable and appropriate, we are very concerned that both bills include a criminal penalty for bringing even very small amounts of cannabis into Virginia for personal use. We ask that you formally request that the bills be amended to revise § 4.1-1111 to exempt personal-use quantities.

This section would make it a Class 1 misdemeanor — punishable by up to a year in jail — to “import” up to five pounds of cannabis from anywhere outside of the Commonwealth. If personal-use quantities up to one ounce are not exempted from this provision, the legislation will be re-criminalizing conduct — with a possible lengthy jail sentence — that is currently punishable by a \$25 civil fine. If this section is not amended before the law takes effect in 2024, anybody who crosses the Virginia state line with a joint in their pocket would be subject to possible arrest and prosecution.

To illustrate, it is already legal for adults in Washington, D.C. to grow cannabis and share it with other adults, and many residents of northern Virginia work or socialize in D.C. Today, if a Virginia resident obtained a small amount of cannabis from a friend or coworker in our nation's capital and returned to Virginia with it, this behavior would be penalized with a \$25 fine. But if the new law takes effect without this section being revised, the Virginia resident could face up to a year in jail.

Additionally, both D.C. and Maryland may have legal sales before Virginia, so this provision would even criminalize returning to Virginia with cannabis that has been legally purchased from a regulated market.

If enacted, this policy can be expected to lead to intrusive, insulting, and possibly dangerous police-civilian interactions where law enforcement demands proof of the origin of the cannabis, such as by demanding receipts. And since we know that cannabis laws have been disproportionately enforced against Black and brown Virginians, we fear that this new penalty will be disproportionately enforced as well.

We believe this provision, as currently written, would be a big step in the wrong direction. We recognize that it may be possible for the legislature to amend the law next year, but we think it would be reasonable and appropriate for you to request an amendment that exempts possession of up to one ounce from the new penalty created in § 4.1-1111.

Under federal law, bringing a small amount of cannabis into Virginia is no less or more illegal than the possession of cannabis *within* Virginia. Federal law in no way requires Virginia to criminalize cannabis, nor does it require Virginia to criminalize crossing state borders with a small amount. Meanwhile, we are optimistic that federal law will change in the relatively near future. Gallup polls show 68% of Americans support legalization; the U.S. House of Representatives passed the M.O.R.E. Act in December 2020, which would legalize cannabis; Sen. Majority Leader Schumer is making federal legalization a priority; and President Biden supports decriminalization. The federal government's outdated laws may soon be modernized, too.

Possession of up to an ounce in Virginia is currently punishable by a \$25 fine. Criminalizing the crossing of state lines with cannabis would be a huge step backwards and would also re-criminalize personal-use amounts. We hope you will work to remove that concerning provision.

If you offer amendments, we also encourage you to move up the effective date of legal possession to July 1, 2021.

Again, we are very grateful for your support for this important legislation. Thank you for taking time to consider this request.

Sincerely,



Karen O'Keefe
Director of State Policies
Marijuana Policy Project



Matt Simon
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