Retroactive Resentencing for Marijuana Offenses in Virginia

3-year impact in Virginia

Applying retroactive resentencing practices to individuals incarcerated for marijuana offenses in Virginia could amount to $4.5M in reduced marginal incarceration costs over 3 years, while reducing prison populations in Virginia by 161. Providing an avenue to early or immediate release for these individuals would ensure that legalization applies evenly to all Virginians, while reducing financial strain on the Virginia DOC (which faces a $40,752 per-capita incarceration cost, 19.9% higher than in the previous fiscal year).

Cumulative marginal cost avoidance estimate

<table>
<thead>
<tr>
<th>Year</th>
<th>Cost</th>
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</thead>
<tbody>
<tr>
<td>Jul 2024</td>
<td>$1.4M</td>
</tr>
<tr>
<td>Jan 2025</td>
<td>$2.4M</td>
</tr>
<tr>
<td>Jul 2025</td>
<td>$3.3M</td>
</tr>
<tr>
<td>Jan 2026</td>
<td>$3.9M</td>
</tr>
<tr>
<td>Jul 2026</td>
<td>$4.5M</td>
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</tbody>
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Projected population impact

161 Fewer people in prison

Up to 742 Impacted sentences overall

The opportunity

Legalizing marijuana has allowed many states to curb their criminal justice expenditures by ending enforcement, prosecution, and incarceration for minor marijuana offenses, without adverse effects on crime rates or traffic safety. After decriminalization in 2020, Virginia legalized marijuana for adult use in July 2021—this marked a significant departure in the state’s prior system of marijuana prohibition, which cost approximately $81.2M to enforce in 2016, during which 21,637 individuals were arrested for marijuana offenses.

21,637 individuals arrested for marijuana offenses in VA (2016)

400+ Virginians serving time for exclusively marijuana offenses

However, measures have not yet been taken to extend the intent of legalization to those still incarcerated or under supervision for pre-legislation marijuana cases. At least 400 people are serving prison or probation time for marijuana offenses exclusively, with many more facing sentences with marijuana-related enhancements.

Similar policies in other states

- **New Mexico**
  In 2021, New Mexico passed both the Cannabis Regulation Act (CRA), legalizing adult-use marijuana, and Senate Bill 7, which established a process for possible dismissal and expungement of cannabis-related sentences for conduct that would have been legal under the CRA. The bill charges the state DOC and local jails with identifying individuals who qualify and requires prosecutors and courts to review and render decisions for all such cases within specified time bound deadlines.

- **Washington**
  After legalizing adult-use cannabis in 2012, WA passed SB 5361 in 2021, which guarantees resentencing hearings for all individuals with sentences stemming from conduct now legal. The statute establishes boundaries that restrict prosecutorial objections to cases where individuals are statutorily ineligible, and time bound deadlines for the courts to render a decision within a prescribed period of time.

- **Arizona**
  Arizona voters approved Prop 207 in 2020, which legalized adult-use marijuana, while also enabling qualified individuals to petition a court for retroactive expungement of certain cannabis-related criminal offenses. This voter initiative states that courts shall grant petitions unless the prosecution establishes clear and convincing evidence that the petitioner is not eligible for expungement.