

# Hemp is legal. Marijuana isn't. State forensic scientists say soon they'll have tests to tell the two apart

By **Ned Oliver** - July 31, 2019



*Cannabis plant. (Getty Images)*

The state forensic science lab plans to distribute 15,000 field tests to police departments around Virginia that will help officers distinguish between hemp and marijuana plants, which can appear identical but carry very different legal implications.

“You can’t tell the difference ... without some kind of quantitative testing,” said Linda Jackson, who directs the Department of Forensic Science.

The General Assembly passed legislation earlier this year allowing the production and sale of hemp for CBD, a wildly popular but largely untested component of the plant marketed as a remedy for everything from anxiety to seizures.

Since the law was enacted on an emergency basis in March, farmers have planted [thousands of acres](#) of the crop. Hemp products had already popped up in stores all over the state in preparations ranging from oils to “[hemp flower](#),” buds of the plant that look and smell just like their contraband cousins.

But so far, law enforcement agencies have had no way to differentiate between a legal hemp product and a still-very-illegal marijuana one.

Both are cannabis plants, but the state defines hemp as having .3 percent or less THC, the intoxicating compound associated with marijuana, which can contain THC levels exceeding 17 percent.

However, lab and field tests currently in use are not capable of making that distinction in most cases – all they can do is confirm the presence or absence of any THC.

The problem is not unique to Virginia. In some states, hemp farmers shipping their crops have been **charged** with drug trafficking.

Closer to home, police in Fredericksburg raided a head shop selling raw cannabis flowers marketed as legal hemp/CBD products. Officials **told** the NBC affiliate in Washington that the products tested positive as marijuana, prompting a felony distribution charge against the owner, Kyle Traugh, which is still pending.

A spokeswoman for the department did not respond to an email seeking comment. Traugh declined to comment, citing the fact that his case is still pending, but he previously said he was assured by the product's manufacturer that they were legal.

The forensic science department has since notified police departments that existing marijuana field and lab tests can't differentiate between hemp and marijuana and that, going forward, their analyses would note that the concentration of THC was not determined.

The new field tests will be distributed over the next several months. The board voted Wednesday to accept \$52,500 in grant funding to cover the cost, which works out to \$3.50 per test.

Developed in Switzerland, the tests allow police to determine on the spot whether a plant contains higher levels of THC or higher levels of CBD.

“One would assume that if cannabis has more THC, that is the drug type of cannabis – marijuana. And if it has more CBD, that is most likely hemp, or the non-drug type of cannabis,” Jackson said. She noted the test should only be used as an investigative tool in consideration of other evidence and would not be admissible in court.

If police pursue charges, a new in-lab test will be able to determine whether the THC concentration is higher or lower than 1 percent. And, if it's under 1 percent, a second test will be able to determine the exact amount to see if it meets the .3 percent threshold set out in the law.

Jackson said all of the tests are in the final stages of validation and testing on cases in which hemp has been raised as a defense will begin in the next several weeks.

Police say they're glad the past few months of uncertainty will be ending soon. "We have enough to do without chasing down legal products," said Herndon Police Chief Maggie DeBoard, who sits on the forensic science board. "But we have to be able to tell."

#### Ned Oliver

Ned, a Lexington native, has a decade's worth of experience in journalism, beginning at The News-Gazette in Lexington, and including stints at the Berkshire Eagle, in Berkshire County, Mass., and the Times-Dispatch and Style Weekly in Richmond. He also has the awards to show for it, including taking a pair of first-place honors at the Virginia Press Association awards earlier this year for investigative reporting and feature writing. He is a graduate of Bard College at Simon's Rock, in Great Barrington, Mass. Contact him at [noliver@viriniamercury.com](mailto:noliver@viriniamercury.com)



## Virginia prison officials say they eliminated solitary confinement. Inmates say they just gave it a new name. 'It's all very Hannibal Lecter-ish'

By **Ned Oliver** - January 14, 2019



Attendees at a rally for prison reform Saturday on Capitol Square called for better conditions for Virginia inmates, including the elimination of solitary confinement. (Ned Oliver/Virginia Mercury)

Virginia prison officials [say](#) they're on the leading edge of corrections reform for "operating without the use of solitary confinement."

But Derek Cornelison, a 34-year-old inmate at Red Onion, one of the state's two supermax prisons in Wise County, says he and dozens of other prisoners have remained isolated in tiny cells for 22 to 24 hours a day for years — a level of confinement increasingly viewed as cruel, inhumane and a violation of international human rights standards. (*Update: The Virginia Department of Corrections now disputes this account, see below*)

"These people are very good with playing with words," he says in a letter. "We (prisoners) call a thing what it is ... sometimes 'solitary confinement' ... sometimes 'segregation' ... but most times we just call it the plain old 'hole,' because that's what it feels like, like we've just been thrown into the bottom of a hole to be buried and forgotten about."

He says his only time outside his cell comes a few times a week for about an hour at a time, when he's shackled and led out to either be chained to a table to prepare

utensils for meals, his work assignment, or to a small recreation cage, where he says he can look up through a mesh grill and see the sky.

"It's all very Hannibal Lecter-ish," he says.

Advocates and lawmakers back up Cornelison's account. More than 800 Virginia inmates were held in some form of solitary confinement, according to a December report by the Vera Institute of Justice, a nonprofit national research agency that proposed a variety of alternatives to long-term solitary confinement. The figure represents about 3 percent of the state's prison population.

In its own [report](#), the ACLU of Virginia concluded in May that "solitary confinement remains overused in Virginia and largely is still hidden from the public's watchful eyes."

## Defining 'solitary confinement'

The Department of Corrections' claim that it eliminated the use of solitary confinement rests on how it defines the term.

"There is no solitary confinement because while offenders in long-term restrictive housing (the most restrictive housing possible in our facilities) are segregated from the general inmate population for their safety and/or the safety of others, they still interact with counselors, security staff, medical staff and others and have access to books, music, phone calls, etc.," says department spokeswoman Lisa Kinney.

She said only 62 people are currently being held on a long-term basis in those conditions, down from 511 in 2015.

She attributes that drop to reforms introduced in 2011 that created a "step-down" program to offer inmates a path out of solitary confinement and institute regular internal reviews over its use. The program is primarily based on good behavior, journaling and classes.

"Virginia has made huge strides," she said.

Lawmakers and advocates have applauded the reforms instituted so far, but they're skeptical that they go as far as the department claims and argue the distinction officials make between solitary confinement and restrictive housing is meaningless.

"Whatever you want to call it, it's not somewhere that most people should be and there's a question whether anyone should be there," said state Sen. Adam Ebbin, D-Alexandria.



## Lawmakers seek additional oversight

Ebbin is among a group of Democratic lawmakers pursuing legislation in the General Assembly that would require the Department of Corrections to report detailed data on use of solitary confinement.

“Data the DOC does provide is extremely limited and does not include reasons why people were placed in solitary, how long they’re being held or whether they’re members of vulnerable populations,” says Bill Farrar, communications director of the ACLU of Virginia, which is advocating for the legislation.

The ACLU notes that many of the claims made by corrections officials are disproved by a [lawsuit](#) they filed in September on behalf of a mentally ill man they allege has been held in solitary confinement in Virginia for more than 12 years. (The Department of Corrections denies the allegations.)

Likewise, Interfaith Action for Human Rights, [an advocacy group](#), presented accounts from more than a dozen other Virginia inmates they say are unduly suffering in solitary confinement, many also diagnosed with mental illness. “Although we can’t independently confirm their accounts, there are enough stories that have similar elements to warrant more attention and better data than we’ve been able to secure,” said board member Gay Gardner.

The Department of Corrections has not taken a position for or against the proposed legislation, but Kinney accused its backers of “trying to score easy political points and advocacy groups trying to fundraise off this issue.”

The December [report](#) by the Vera Institute, which was conducted in cooperation with state corrections officials, recommended a range of less-restrictive alternatives to indefinite solitary confinement for prisoners considered too dangerous to be released into a prison’s general population. Officials said they would continue to explore those suggestions.

Cornelison, who was convicted of armed robbery in Stafford County in 2006, says the department’s reforms so far might look good on paper, but in practice he says administrative reviews are rote and arbitrary.

He says he was placed in solitary confinement in 2015 after assaulting and seriously injuring an inmate he says threatened to harm his family. Asked about his account, prison officials initially said they don’t comment or release records regarding individual inmates.

“No, I haven’t been given any indication of when I’ll be let out of solitary confinement, or even if I’ll ever be let out of solitary confinement,” he says. “The way it goes, when the prison administration decides that I’ve sat in solitary confinement for long enough, that’s when they’ll let me out of it, if they let me out

of it. The decision to release me from solitary confinement could come next month, next year, or never.”

**UPDATE:** Asked about Cornelison’s claims, the Department of Corrections initially said it does not comment or release records regarding individual inmates. On Thursday, three days after this story was published, Kinney, the spokeswoman for the Department of Corrections, sent the Mercury this statement:

*Offender Cornelison was transferred from Sussex I State Prison to Red Onion State Prison in 2016 due to an incident in which he apparently tried to kill another offender, stabbing him approximately 20 times. Offender Cornelison is currently afforded the opportunity to participate in several out of cell activities, including outside recreation, programs and job assignments totaling approximately 32 hours a week.*

*It is simply not true that this offender has to stay in his cell 22-24 hours a day, as stated in your article.*

**Ned Oliver**

Ned, a Lexington native, has a decade’s worth of experience in journalism, beginning at The News-Gazette in Lexington, and including stints at the Berkshire Eagle, in Berkshire County, Mass., and the Times-Dispatch and Style Weekly in Richmond. He also has the awards to show for it, including taking a pair of first-place honors at the Virginia Press Association awards earlier this year for investigative reporting and feature writing. He is a graduate of Bard College at Simon’s Rock, in Great Barrington, Mass. Contact him at [noliver@viriniamercury.com](mailto:noliver@viriniamercury.com)





## Most public defenders in Richmond make less than a secretary in the prosecutor's office. They want a raise

By **Ned Oliver** - September 30, 2019

Lawyers in Richmond's public defender's office, in the midst of a campaign to increase their salaries, say they're paid so much less than the prosecutors they face in court that it raises questions about whether low-income defendants are getting a fair shake at justice.

"If you're going to fund one side of the courtroom, then you have to fund the other," says Lauren Whitley, Richmond's deputy public defender. "And to not do that automatically results in inequity."

The state-funded law office represents criminal defendants who can't afford attorneys, and while they say no one gets into the line of work expecting to get rich, their office has seen 60 percent of their staff leave over the past three years, almost always for higher paying jobs, including in the city prosecutor's office.

Whitley says all that turnover means defendants are often represented by lawyers with much less experience than the prosecutors on the other side of the courtroom. They calculated that almost half their office has less than three years of experience, compared to 12 percent, or five out of 40 lawyers, in the city prosecutor's office.

That's because public defenders, with salaries starting at \$53,000, make almost 40 percent less on average than their counterparts in the prosecutor's office,



according to the defender's office, which used Freedom of Information Act requests to obtain and compare salary data. Among their findings: 27 of their 29 attorneys make less than the highest paid administrative assistant in the prosecutor's office.

While both offices are funded by the state at roughly comparable levels, the discrepancy comes down to local budgetary contributions. Most cities and counties chip in extra cash to boost salaries in their prosecutors' offices. But very few make similar contributions to their local public defender offices.

Richmond, for instance, contributes \$7 million every year to help supplement salaries and other budgetary needs in the prosecutor's office. It contributes no money to the public defender's office.

Low compensation for public defenders and court-appointed lawyers has been an ongoing issue in Virginia. A major reform in 2007 lifted the state's lowest-in-the-nation compensation rates for court-appointed lawyers, who represent poor defendants in localities without public defender offices. However, the pool of extra money used to augment those low fees has been exhausted before the end of the fiscal year four times – most recently in April 2018, meaning court-appointed lawyers worked for a reduced rate until the new fiscal year began more than two months later on July 1.

In 2008, the General Assembly began allowing local governments to supplement the pay of staff in their public defender offices. (It's up to the General Assembly to decide where and when to establish public defender offices – an approach many criminal justice advocates see as more cost effective and better for defendants than the court appointed system. At a forum Friday, prosecutors in both Chesterfield and Henrico said they supported establishing public defender offices in their respective localities, noting that the counties are among the largest in the state to operate without a public defender office.)

Local funds have been slow to flow to the offices. Currently at least four of 25 local public defender offices in the state receive local funding in addition to state funding: Alexandria, Arlington, Charlottesville and Fairfax.

The deputy public defender in Fairfax, Andy Elders, said the local salary supplement the county provides there isn't enough to guarantee public defenders make as much as prosecutors with similar levels of experience, but that it was enough to stem high-turnover with which his office had been contending.

"I don't think we've had anyone leave for money since," he said, and that's meant less time spent on training and on-the-job learning and more time meeting with clients and family members.

“It’s supposed to be an equal system and the scales are supposed to be balanced, but one side is literally getting millions and millions of dollars to fund or better fund their operations, and the other side doesn’t have that.”

In Richmond, the public defender’s office has calculated they need about \$1 million in funding to achieve pay parity with the city prosecutors office. To make their case to the city, Whitley and Senior Assistant Public Defender Ashley Shapiro are highlighting their work to reduce recidivism and on specialty-dockets focused on drugs and mental health.

“I think sometimes those things are missed in the overall discussion about the role the public defenders play in the communities they work for,” Whitley said. “It’s like, sometimes, we hear, we pay prosecutors more because they help keep our community safer. I think we do, too.”

So far, it doesn’t sound like they’re facing much resistance. Interim Richmond Commonwealth’s Attorney Colette McEachin said she supports their request. “I know the city has limited resources, but the public defender’s job is just as important to maintain a balance in the criminal justice system as a prosecutor’s job,” she said.

Mayor Levar Stoney’s office sounded open to the proposal. “The budget team will give this request serious consideration,” his press secretary, Jim Nolan, said in an email. “As a supporter of criminal justice reform, the mayor believes public defenders should be compensated more competitively.”

*Correction: An earlier version of this story incorrectly listed Loudoun as a locality that provides local funding to its public defenders office.*

#### **Ned Oliver**

Ned, a Lexington native, has a decade’s worth of experience in journalism, beginning at The News-Gazette in Lexington, and including stints at the Berkshire Eagle, in Berkshire County, Mass., and the Times-Dispatch and Style Weekly in Richmond. He also has the awards to show for it, including taking a pair of first-place honors at the Virginia Press Association awards earlier this year for investigative reporting and feature writing. He is a graduate of Bard College at Simon’s Rock, in Great Barrington, Mass. Contact him at [noliver@virginiamercury.com](mailto:noliver@virginiamercury.com)

