



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2458

(Patron – McDougle)

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LD #: 03-0358838

Topic: Remove detention center recommendation from drug sentencing guidelines worksheet

Proposed Change:

This proposal adds § 17.1-807 to modify the Virginia voluntary sentencing guidelines. This proposal would remove from the Schedule I/II drug sentencing guidelines the detention center recommendation for offenders with no felony record who sell one gram or less of cocaine.

Current Practice:

Since July 1, 1997, Virginia's sentencing guidelines have contained enhancements designed to increase the sentence recommendation in cases involving unusually large amounts of cocaine, while at the same time providing sentence recommendations that include alternative forms of punishment for first-time felons who sell relatively small amounts of cocaine. Of convictions in Virginia for selling, manufacturing, distributing or possessing with intent to distribute a Schedule I or II drug (§ 18.2-248(C)), over 90% are associated with cocaine. The guidelines enhancements for selling large amounts of cocaine increase the sentence recommendation by three years in cases involving one ounce or more but less than ½ pound of cocaine and by five years if the amount of cocaine is ½ pound or more. In cases with less than one ounce of cocaine, no enhancement applies. In contrast, an offender who sells one gram (.04 ounce) or less of cocaine who has never been convicted of a felony receives a dual sentencing recommendation. The recommendation reflects the traditional term of incarceration provided by the guidelines as well as a recommendation for the detention center incarceration program. The judge may sentence such an offender in accordance with either the recommendation for traditional incarceration or the recommendation for detention center incarceration and be considered in compliance with the guidelines.

According to fiscal year (FY) 2001 and FY2002 Sentencing Guidelines (SG) data, 276 first-time felons received a dual sentence recommendation under the Schedule I/II drug guidelines. Of those, 81 (29%) were sentenced to detention center incarceration or the state's boot camp incarceration program (prior to July 1, 2002, the boot camp program was included along with the detention center program as an alternative recommendation on the Drug Schedule I/II guidelines; because the program closed in 2002, boot camp was removed from the guidelines). The remaining 195 offenders (71%) who received a dual sentence recommendation were sentenced to a traditional period of incarceration, with a median incarceration term of nine months.

In 1994, the General Assembly directed the Virginia Criminal Sentencing Commission to develop a risk assessment instrument for nonviolent offenders and to determine if 25% of the

lowest risk offenders could be diverted from prison to an alternative sanction “with due regard to public safety” (§ 17-235). After pilot testing an empirically-based risk assessment tool from December 1997 through June 2001, the Commission recommended in its *2001 Annual Report* that the risk assessment program be expanded statewide. The General Assembly accepted the Commission’s recommendation and statewide implementation began July 1, 2002. This risk assessment instrument is completed for drug, fraud and larceny offenders who are recommended for an active term of incarceration by the sentencing guidelines and who satisfy the eligibility criteria established by the Commission. Offenders with any current or prior convictions for violent felonies (defined in § 17.1-803) and offenders who sell an ounce or more of cocaine are excluded from risk assessment consideration. When a risk assessment worksheet is completed, offenders scoring 35 points or less on the scale are recommendation for sanctions other than traditional incarceration. However, judges are considered in compliance with the guidelines if they sentence within the recommended incarceration range or if they follow the recommendation for alternative punishment.

According to data from the risk assessment pilot sites, most of the first-time felons who sold one gram or less of cocaine were not recommended for alternative punishment by the risk assessment instrument because of a score that exceeded the established threshold. That is to say, nearly two-thirds (65%) of the first-time felons who qualified for an alternative punishment recommendation on the Schedule I/II drug guidelines did not qualify for an alternative punishment recommendation on the Commission’s risk assessment instrument.

Impact of Proposed Legislation:

With the recent statewide implementation of risk assessment for nonviolent offenders, it is unclear what impact, if any, the proposal will have on judicial sentencing practices in cases involving the sale of a Schedule I/II drug. Adoption of the proposal by the General Assembly, however, would necessitate an adjustment of the sentencing guidelines in order to remove the dual sentence recommendation for first-time felons who sell one gram or less of cocaine.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.