



## **Impact Analysis on Proposed Legislation**

*Virginia Criminal Sentencing Commission*

### **Senate Bill No. 1071**

**Amendment in the Nature of a Substitute**  
***(Patron Prior to Substitute – Rerras)***

**Date Submitted:** 1/22/03

**LD #:** 03-0634536

**Topic:** Sale of drugs on or near certain properties

#### **Proposed Change:**

This proposal amends § 18.2-255.2 prohibiting the manufacture, sale, distribution, or possession with intent to sell, give, or distribute a controlled substance, imitation controlled substance, or marijuana, on or near school properties, recreation centers, public libraries and state hospitals. It is a violation of this section if the offender possessed any of these substances on or near any of the above locations, regardless of where he intended to sell, give or distribute them.

#### **Current Practice:**

Based on fiscal year (FY) 2001 and FY2002 Local Inmate Data System (LIDS) data, 17 offenders held pre- or post-trial in jail were convicted under the non-felony provisions of § 18.2-255.2 for selling a controlled substance or marijuana on school property for accommodation only. Of these, 88% received a local-responsible sentence, with a median sentence of one-month.

According to FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, 213 offenders were convicted under the felony provisions of § 18.2-255.2. None of these were for a second, or subsequent, offense which carries a one-year mandatory minimum sentence. Of the felony cases of distribution of controlled substances, imitation substances or marijuana on school property, nearly 24% were sentenced to probation, 17.8% received a jail sentence, and more than 58% were sentenced to a state-responsible sentence with a median sentence of 2.3 years.

First-time felony violations under § 18.2-255.2 are covered by the sentencing guidelines as the primary (or most serious) offense. The other two offenses under § 18.2-255.2 are not covered by the guidelines as the primary offense but may augment the guidelines recommendation if a covered offense is the most serious at conviction.

#### **Impact of Proposed Legislation:**

If the proposed change results in additional prosecutions under § 18.2-255.2, the proposal may have an impact on state or local-responsible bed space. However, data available to the Commission are insufficient to determine how many additional convictions, if any, would result from this change. Because violation of § 18.2-255.2 constitutes a separate and distinct felony, offenders may be convicted for another drug offense, such as selling a Schedule I or II drug under § 18.2-248(C), in addition to this crime. The impact of the proposal on sentencing

practices is unclear, since a judge may suspend part or all of the sentence for the first violation of § 18.2-255.2 or set the sentence to run concurrently with sentences for the other charges.

No adjustment to the sentencing guidelines would be necessary under the proposal.

**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.**