



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1974

(Patron – Tata)

Date Submitted: 1/12/2005

LD #: 05-0709524

Topic: Unlawful possession of methamphetamine precursors

Proposed Change:

The proposed legislation adds § 18.2-248.8 regarding the unlawful possession of methamphetamine precursors. Any person who possesses any quantity of two or more listed chemical agents or precursors with the intent to manufacture methamphetamine, methcathinone, amphetamine, or phentermine shall be guilty of a Class 6 felony. Any person who possesses more than nine grams of ephedrine, pseudoephedrine, or phenylpropanolamine is guilty of a Class 6 felony; however, this provision does not apply to licensed health care providers, veterinarians, pharmacists, retail distributors, wholesalers, common carriers, manufacturers, or their agents if the possession is in the regular course of lawful business activities, or for medicinal or household use as indicated. Any person who sells, transfers, distributes or furnishes any listed chemical agent or precursor to another person with knowledge that the chemical agent or precursor will be used for the manufacture of methamphetamine, methcathinone, amphetamine, or phentermine shall be guilty of a Class 6 felony.

Analysis:

In 2001, the Commission conducted a comprehensive study of sentencing practices in methamphetamine cases at the request of the General Assembly (chapters 352 and 375 of *The Acts of the Assembly 2001*). In response to continued concerns over methamphetamine crime in Virginia, the Commission this year conducted a second detailed study on this specific drug. Chapter 5 of the Commission's *2004 Annual Report*, "Methamphetamine Crime in Virginia," provides the most recent data available on the use of the drug, lab seizures, arrests and convictions in the state.

Virginia classifies methamphetamine as a Schedule II controlled substance. Under Virginia law, it is a Class 5 felony for any person to unlawfully possess a Schedule II controlled substance (§ 18.2-250(A, a)). Under § 18.2-248(C), the manufacture, sale, distribution, or possession with intent to manufacture, sell or distribute a Schedule II controlled substance is a felony punishable by a term of imprisonment from 5 to 40 years and a fine not more than \$500,000. Like many other states, Virginia also lists the immediate methamphetamine precursor phenylacetone as a Schedule II controlled substance (§ 54.1-3448). This corresponds to the "narrow" definition of a precursor substance, where the law applies only to a compound that immediately precedes the final illegal substance. Virginia law does not presently penalize possession or distribution of a broad range of precursor chemicals such as ephedrine, pseudoephedrine, acetone, ether, toluene,

iodine, red phosphorous, or anhydrous ammonia, which are used in the manufacture of methamphetamine.

Many western and midwestern states have laws penalizing the possession and distribution of numerous precursor substances used in the manufacture of methamphetamine. These states employ a “broad” definition and may list numerous specific precursors. In particular, ephedrine and pseudoephedrine are frequently listed as precursors. Arizona has laws regarding the quantity of pseudoephedrine necessary to trigger a violation, and also a law penalizing the possession of equipment used in methamphetamine production. Idaho also has a law regarding the quantity of precursor chemicals necessary to trigger a violation. Other states have laws that do not specify threshold quantities, but penalize “possession with intent to manufacture methamphetamine”. Others (Texas, for example) penalize possession of at least three substances from a list of precursors.

Recent legislative efforts in other states have focused on (1) restricting the sale or distribution of products containing pseudoephedrine, and (2) preventing the theft of anhydrous ammonia. Only 14 states currently have quantity restrictions on the possession, purchase, sale or transfer of products containing pseudoephedrine. Some of these states restrict both the number of packages (typically 2 or 3 packages) and the total quantity of pseudoephedrine (often 9 or 12 grams) that can be purchased or possessed at any one time. Exemptions may be allowed for specified forms of pediatric products, liquid or gelcap formulations, and products formulated to effectively prevent the conversion of the active ingredient (i.e., pseudoephedrine) into methamphetamine.

Impact of Proposed Legislation:

As proposed legislation establishes several new crimes that are not specifically defined in the current *Code*, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, the databases available to the Commission are insufficient to provide information on the number of new convictions that may result under the proposed legislation.

No adjustment to Virginia’s 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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