



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1156 **Amendment in the Nature of a Substitute** **(Patron Prior to Substitute – Stolle)**

Date Submitted: 2/22/2005

LD #: 05-8041820

Topic: Manufacturing methamphetamine

Proposed Change:

The proposed legislation amends § 18.2-248 to increase the statutory penalty for manufacturing methamphetamine or less than 200 grams of a mixture containing methamphetamine from a range of 5 to 40 years to a range of 10 to 40 years. The proposal also increases the statutory penalty for a second conviction from a range of 5 years to life to a range of 10 years to life; for a third or subsequent conviction, the proposal sets the statutory penalty range at 10 years to life, 3 years of which must be a mandatory minimum term of imprisonment. Under the proposal, the offender may be ordered by the court to make restitution to any innocent property owner whose property is damaged, or rendered unusable, as a result of the methamphetamine production. In addition, the proposal also expands the definition of “continuing criminal enterprise” (used in the “kingpin” portions of the statute) to include violations committed, with respect to methamphetamine or other controlled substances classified as Schedule I or II, for the benefit of, direction of, or in association with an criminal street gang.

Currently, in addition to the penalties described above, under §§ 18.2-248(H), 18.2-248(H1) and 18.2-248(H2), mandatory minimum “kingpin” penalties apply to offenses involving large quantities of Schedule I/II controlled substances or marijuana. Methamphetamine was added to Virginia’s drug kingpin statutes in 2000. These provisions would remain unaffected by the proposed legislation.

The proposal also adds § 18.2-248.02 making it a felony punishable by imprisonment of 10 to 40 years for any person in a custodial relationship over a child to knowingly allow that child to be present in the same dwelling, structure or vehicle during the manufacture or attempted manufacture of methamphetamine. This penalty shall be in addition to, and served consecutively, with any other sentence.

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. It indicates that, although methamphetamine is more prevalent in Virginia today than

in earlier years, it remains much less pervasive than other Schedule I or II drugs statewide. According to calendar year (CY) 2003 Pre/Post-Sentence Investigation (PSI) data, more than 80% of state Schedule I or II drug cases were related to cocaine and approximately 11% involved heroin; less than 5% involved methamphetamine. Cases involving the manufacture or sale of large quantities of methamphetamine are often heard in the federal courts rather than the state's circuit courts.

As of October 28, 2004, data from the DEA's National Clandestine Laboratory Seizure System (CLSS) show Virginia with a total of 63 methamphetamine lab seizures during the first ten months of 2004, for a rate of roughly 6.3 seizures per month, compared with 30 seizures for all of 2003, a rate of 2.5 seizures per month. This ranks Virginia 32nd among the states in methamphetamine lab seizures to date for 2004, compared to a ranking of 38th for 2003. Although Virginia's numbers are comparatively small, the number of clandestine methamphetamine lab seizures more than doubled last year's total during the first ten months of 2004. Preliminary 2004 data from the Virginia State Police (VSP) indicate that approximately 59% of these offenders face state charges, 16% face federal charges, and 25% were classified as still pending.

According to the Chief of the Drug Analysis Section, Western Laboratory, Division of Forensic Science, analysis of methamphetamine almost never involves the drug in a pure or nearly pure state; it is typically cut with another substance, or poorly manufactured and then cut with another substance.

Impact of Proposed Legislation:

By raising the statutory minimum sentence for violations under § 18.2-248 involving pure methamphetamine or less than 200 grams of a methamphetamine mixture, the proposed legislation is expected to increase the state-responsible (prison) bed space needs of the Commonwealth; however, the impact of the proposal on judicial sentencing practices cannot be determined. A judge can suspend part, or all, of the sentence imposed for this crime. In contrast, in any case heard by a jury, the jury must impose at least the statutory minimum penalty provided by law. In the historical data, however, none of the FY1995-FY2004 methamphetamine manufacturing cases involved jury trials. Because methamphetamine cases are often processed through the federal court system and are not reflected in state statistics, it is unclear if the proposal will impact the number of offenders prosecuted in Virginia's circuit courts in the future.

The expansion of what constitutes a continuing criminal enterprise may also increase the prison bed space needs, but the number of persons who may be affected cannot be determined. However, most of the impact from this change is likely to be outside the six-year window of consideration, as persons convicted under the circumstances that would make them eligible under the proposal would likely serve most, if not all, of those six years for other crimes already defined under § 18.2-248.

The inclusion of § 18.2-248.02 creates a new crime whose impact on prison sentences is also undetermined. The 2004 General Assembly amended §§ 16.1-228 and 63.2-100 of the *Code of Virginia* to expand child abuse and neglect provisions to include permitting a child to be present during the manufacture, attempted manufacture or unlawful sale of a Schedule I/II controlled substance. However, convictions under the revised provision do not yet appear in databases available to the Commission. Convictions under § 18.2-371.1 for felony child abuse/neglect and

gross, wanton or reckless care of a child are recorded in the PSI data, but these data are not sufficiently detailed to identify which offenses are due to exposure to methamphetamine.

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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