



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1040

(Patron – Kilgore)

LD #: 06-0778372

Date: 12/16/2005

Topic: Sale of pseudoephedrine

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

Summary of Proposed Legislation:

The proposal adds § 18.2-248.8 to restrict sale of pseudoephedrine (including its salts, optical isomers, and salts of its optical isomers) by requiring that (a) only a licensed pharmacist may dispense products with a detectable amount of the drug, (b) persons purchasing or otherwise acquiring products with a detectable amount of the drug provide specific forms of identification and shall sign a written log or receipt, and (c) persons purchasing a product with a detectable amount of the drug is restricted to nine grams within any 30-day period. The proposal, however, does not apply if there is a valid prescription or the product is formulated to effectively prevent the conversion of pseudoephedrine into methamphetamine (including certain mixtures in liquid or gel forms). Under the proposal, violation is punishable as a Class 6 felony. Currently, subsection J of § 18.2-248 makes it a Class 6 felony if a person possesses two or more specific substances, including pseudoephedrine, with intent to manufacture methamphetamine, but does not restrict its sale or purchase.

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. In the 2005 session of the General Assembly, Virginia made it a Class 6 felony to possession with intent to manufacture methamphetamine, methcathinone or amphetamine two or more substances from a broad range of precursor chemicals including ephedrine, pseudoephedrine, acetone, ether, iodine, red phosphorous, or anhydrous ammonia, which are used in the manufacture of methamphetamine.

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. According to data provided by the National Alliance for Model State Drug Laws (NAMSDL), 28 states now have some type of quantity restrictions on the sale or distribution 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 (e.g., pseudoephedrine) into methamphetamine. Numerous states have also enacted new legislation during the 2005 legislative session incorporating other restrictions similar to those contained in the proposal (i.e., display restrictions, show identification, sign a log).

Impact of Proposed Legislation:

State adult correctional facilities. By creating a new felony offense, the proposed legislation may increase the state-responsible (prison) bed space needs of the Commonwealth; however, the magnitude of the impact cannot be determined.

Local adult correctional facilities. Because the proposal defines a new, there may be an increased need for local-responsible (jail) beds under the proposal; however, the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal creates a new crime not currently defined by the *Code*, there may be an impact on community corrections resources. This impact cannot be quantified.

Virginia's sentencing guidelines. The new crime defined by the proposal would not be covered by Virginia's sentencing guidelines as the primary (or most serious) offense in a case; however, convictions under the proposed statute may augment the guidelines recommendation if a covered offense is the most serious at conviction. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase juvenile correctional center (JCC) bed space needs since mandatory minimum sentences are not applicable to juvenile offenders. Also, the Department's Length-of-Stay (LOS) guidelines will not be affected by the proposed changes.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

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.