



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 1347

(Patron – Bell)

LD#: 06-7946105

Date: 1/6/2006

Topic: Distribution of Schedule I or II drugs or marijuana

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
At least \$8,532,309 (356 beds)
- **Local Adult Correctional Facilities:**  
At least -\$108,090 (-11 beds)
- **Adult Community Corrections Programs:**  
Cannot be determined

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

#### Summary of Proposed Legislation:

The proposal amends §§ 18.2-248, 18.2-248.1 and 18.2-255 relating to mandatory minimum penalties for offenders convicted of the manufacture, sale, distribution or possession with intent to distribute Schedule I or II drugs or marijuana.

Currently under § 18.2-248(C), the manufacture, sale, distribution or possession with intent to distribute a Schedule I or II drug are felonies punishable by a term of imprisonment for not less than five nor more than 40 years and a fine of not more than \$500,000. Upon a second or subsequent conviction for such a violation, the offender may be sentenced to imprisonment for life or for any period not less than five years; however, the proposal would provide that three years of such a sentence constitutes a mandatory minimum term of imprisonment. Upon a third or subsequent conviction, the offender may be sentenced to imprisonment for life or for a period of not less than five years, three years of which shall be a mandatory minimum term of imprisonment; the proposal would increase the mandatory minimum penalty from three years to five years.

The proposal also modifies subsection C to provide that any violation involving the following quantities is a felony punishable by a fine of not more than \$1 million and imprisonment for 10 years to life, five years of which shall be a mandatory minimum term of imprisonment:

- 100 grams or more of a mixture or substance containing heroin
- 500 grams or more of a mixture or substance containing some form of powder cocaine
- 250 grams or more of a mixture or substance containing cocaine base (“crack”)
- 1,000 grams or more of a mixture or substance containing marijuana
- 10 grams or more of pure methamphetamine or 20 grams or more of a mixture or substance containing methamphetamine

Since subsections H, H1, and H2 of the current § 18.2-248 (the “kingpin” statutes) already provide penalty enhancements for offenses involving larger amounts of drugs, the effect of the proposal is to create a midlevel range of crimes which also provide for mandatory minimum sentences. However,

these mandatory minimum sentences will not apply in cases where the court finds that the defendant satisfies several conditions (no prior conviction for a violent offense, current offense did not result in death or serious bodily injury to any person, etc) similar to the exemptions listed in subsection H of § 18.2-248.

Under subsection C1 of the current § 18.2-248, the manufacture of methamphetamine or less than 200 grams of a mixture or substance containing methamphetamine is punishable by imprisonment for not less than 10 nor more than 40 years and a fine of not more than \$500,000. Upon a second conviction of such a violation, an offender may be sentenced to imprisonment for life or for any period not less than 10 years; however, the proposal would provide that three years of such a sentence constitutes a mandatory minimum term of imprisonment. When a person is convicted of a third or subsequent offense under this subsection, the proposal would increase the mandatory minimum penalty from three years to five years.

Under the current § 18.2-248.1, the sale, distribution or possession with intent to distribute more than five pounds of marijuana is punishable by imprisonment of not less than five nor more than 30 years; however, the proposal would provide that five years of such a sentence constitutes a mandatory minimum term of imprisonment to be served consecutively with any other sentence. The manufacture of marijuana is also punishable by imprisonment of not less than five nor more than 30 years; the proposal establishes a five year mandatory minimum sentence for this offense. When a person is convicted of a third or subsequent felony offense under this section, the proposal would increase the existing mandatory minimum penalty from three years to five years.

Under the current § 18.2-255, it is unlawful for any person aged 18 or over to knowingly (i) distribute any drug classified in Schedule I, II, III, or IV or marijuana to any person under 18 years of age or (ii) cause any person under 18 years of age to assist in the distribution of any such drug. This offense is punishable by imprisonment for not less than 10 nor more than 50 years. Currently, five years of the sentence imposed for a conviction under this section involving a Schedule I or II drug or one ounce or more of marijuana constitutes a mandatory minimum sentence; however, the proposal would raise this mandatory minimum sentence to 10 years.

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### Analysis:

The following table presents fiscal year (FY) 2002 and 2003 Pre/Post Sentence Investigation (PSI) data for cases involving felony violations of §§ 18.2-248, 18.2-248.1 and 18.2-255.

#### FY2002 and FY2003 Felony Sentencing Information

Felony Offense	Total Cases	Type of Disposition				
		No Active Incarceration % of Cases	Local-Responsible (Jail) % of Cases	Median Sentence	State-Responsible (Prison) % of Cases	Median Sentence
Marijuana, manufacture	40	42.5	22.5	7 months	35.0	1.8 years
Marijuana, sell, etc ½ oz – 5 lbs	545	38.7	41.7	3 months	19.6	1.5 years
Marijuana, sell, etc over 5 lbs	39	17.9	20.5	9 months	61.5	2.0 years
Schedule I/II drugs, distribution	706	26.5	15.4	7 months	58.1	2.0 years
Schedule I/II drugs, Possess w/intent to sell, etc	1463	20.8	14.5	7 months	64.7	2.1 years
Schedule I/II drugs, manufacture	12	25.0	25.0	9 months	50.0	2.3 years

Felony Offense	Total Cases	Type of Disposition				
		No Active Incarceration % of Cases	Local-Responsible (Jail) % of Cases	Median Sentence	State-Responsible (Prison) % of Cases	Median Sentence
Schedule I/II drugs, sell for profit	544	18.2	18.6	7 months	63.2	2.0 years
Schedule I/II drugs, 2 <sup>nd</sup> or subsequent conviction	240	8.8	3.2	6 months	88.0	3.2 years
Schedule I/II drugs, 3 <sup>rd</sup> or subsequent conviction	20	0.0	5.6	6 months	94.4	5 years
Schedule I/II drugs, sell to minor	2	0.0	0.0	NA	100.0	10.5 yrs.
Marijuana, sell 1 oz. or more to minor	1	100.0	0.0	NA	0.0	NA

Note: The median sentence is the middle value, above and below which lie an equal number of cases.  
Data Source(s): Pre/Post-Sentence Investigation (PSI) and Sentencing Guidelines (SG) databases

### Impact of Proposed Legislation:

**State adult correctional facilities.** By adding or increasing mandatory minimum penalties for offenses involving the manufacture, sale, distribution or possession with intent to distribute Schedule I or II drugs or marijuana, the proposal will result in an increased need for state-responsible (prison) bed space. The impact is estimated to be at least 356 additional prison beds by 2012. Since the offenses under the current § 18.2-248(C1) involving the manufacture of methamphetamine were adopted by the 2005 General Assembly with an effective date of July 1, 2005, those cases are not yet represented in the databases available to the Commission.

#### Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY07	FY08	FY09	FY10	FY11	FY12
63	149	246	319	353	356

**Local adult correctional facilities.** The proposal will result in a reduced need for local-responsible (jail) bed space as these offenders will now be sentenced to prison terms. Based on the same methodology, there will be a reduction of at least 11 jail beds statewide, resulting in a savings to the state of \$108,090. There would be an additional statewide savings to the localities of \$99,805 for the same beds.

#### Estimated Six-Year Impact in Local-Responsible (Jail) Beds

FY07	FY08	FY09	FY10	FY11	FY12
-11	-11	-11	-11	-11	-11

**Adult community corrections programs.** The proposal may have an impact on community corrections resources; however, this impact cannot be determined. For offenders who are required to serve longer prison terms as a result of the proposal, the need for community corrections services will be delayed until the additional prison time is served.

**Virginia's sentencing guidelines.** Many of the offenses listed under the current sections are covered as primary offenses under the Drug Schedule I/II and Drug Other guidelines. A few offenses are not covered, but may appear as additional offenses that augment the guidelines recommendation. No adjustment to the guidelines is necessary under the proposal. Mandatory sentences required by statute supersede any recommendations of the sentencing guidelines that are lower than the mandatory terms.

**Juvenile correctional centers.** According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase the bed space needs of juvenile correctional centers.

**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.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$8,532,309 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.**

**Assumptions underlying the analysis include:**

**General Assumptions**

1. State and local responsibility is based on §53.1-20 as analyzed for the Secretary's Committee on Inmate Forecasting in 2005.
2. New cases representing state-responsible sentences were based on the admissions forecast as approved by the Secretary's Committee on Inmate Forecasting in July 2005.
3. Cost per prison bed was assumed to be \$23,966 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*
4. Cost per jail bed was based on The Compensation Board's FY2004 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$26.03 per day or \$9,506 per year. The local cost was calculated by using the daily expenditure cost of \$54.37 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$23.99 per day or \$8,763 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

**Assumptions relating to sentence lengths**

1. The impact of the proposed legislation, which would be effective on July 1, 2006, is phased in to account for case processing time.
2. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2004. For Schedule I/II drug distribution, this rate was 11.41%.
3. Sentences for persons convicted for offenses under §§ 18.2-248, 18.2-248.1 and 18.2-255 were replaced with the appropriate mandatory minimum specified by the proposal.
4. The application of the enhanced penalty for the proposed third conviction appears to be governed by existing case law for a second or subsequent conviction under the same statute (cf., *Able v. Commonwealth*, 16 Va. App. 542, *Patterson v. Commonwealth*, 17 Va. App. 644).
5. Increased statutory minimums may impact bed space through jury sentencing. Sentences were adjusted to reflect the dynamics of jury sentencing using information from the Sentencing Guideline (SG) database. Sentences were increased to the statutory minimum for the proportion of cases that were sentenced by a jury in drug distribution cases (sale, gift, distribution, manufacture or possess with intent to sell, give, distribute or manufacture). For the proportion of cases where the judge suspended some of the jury-imposed time, the jury sentence was reduced by the ratio of (imposed minus suspended time)/imposed time. If the actual sentence already exceeded the proposed statutory minimum penalty, the case was presumed to have no impact.

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