



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 28 **(Patron – Phillips)**

LD#: 06-8043460

Date: 8/15/2005

Topic: Manufacturing, selling, distributing, or possessing with intent to distribute methamphetamine

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined, likely to be small
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Programs:**
None (\$0)

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

Summary of Proposed Legislation:

The proposal amends § 18.2-248 to add or increase mandatory-minimum sentences associated with methamphetamine. Specifically, the proposal creates a new mandatory minimum of one year for a second conviction for manufacturing methamphetamine. The proposal also increases the existing mandatory minimum for a third conviction for manufacturing methamphetamine from three to four years. Finally, the proposal increases the penalty for manufacturing, selling, distributing, or possessing with intent to distribute 200 grams or more of a mixture containing methamphetamine (one of the drug “kingpin” provisions); here, the statutory minimum penalty (and the mandatory minimum sentence) of 20 years is raised to 25 years. Under the proposal, as under existing law, the mandatory minimum term can be suspended if certain conditions are met.

Analysis:

In 2001 and 2004, the Commission conducted comprehensive studies of methamphetamine crime in Virginia. Chapter 5 of the Commission’s *2004 Annual Report*, “Methamphetamine Crime in Virginia,” provides recent data 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 (particularly in certain regions of the state), 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.

The Virginia State Police report 82 methamphetamine lab seizures in the Commonwealth during 2004. Most (67%) of the offenders arrested in connection with the labs are prosecuted in state courts, while 13% are taken into the federal system (the remaining 20% are reported as pending). In 2005 (through August 5), 44 methamphetamine lab seizures have been reported.

The *Code of Virginia* was amended in 2005 to create specific penalties for manufacturing methamphetamine. Section 18.2-248(C1) specifies a penalty of 10 to 40 years for a first conviction and 10 years to life for a second conviction, with a three-year mandatory minimum term upon a third conviction. Data are not yet available for cases sentenced under this newly-enacted provision.

There are significant legal hurdles that must be overcome for a successful prosecution of a person charged with the manufacture of any drug. Accordingly, the Commonwealth may choose to prosecute for the possession of the drug with intent to distribute. Based on PSI data, no offenders were convicted of manufacturing methamphetamine during fiscal (FY) 2002 and FY2003. During this period, however, 113 offenders were convicted of selling, distributing, or possessing with intent to distribute methamphetamine.

Additional information is available related to other types of Schedule I and II drugs, such as cocaine and heroin. Offenders convicted for the first time of manufacturing, selling, distributing, or possessing with intent to distribute a Schedule I or II drug other than methamphetamine have received a prison sentence in most cases (62%); for those going to prison, the median prison sentence (the middle value, where half the sentences were higher and half were lower) was two years. For a second conviction, 88% were ordered to prison to serve a median sentence of 3.5 years.

Drug kingpin provisions relating to methamphetamine (§§ 18.2-248(H), 18.2-248(H1) and 18.2-248(H2)) were enacted in 2000. From enactment through 2003, 8 qualified as kingpin cases (200 grams or more of a methamphetamine mixture) based on reported quantities. According to PSI data, there were no convictions under the kingpin provision for methamphetamine.

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
Manufacture methamphetamine	0	NA	NA	NA	NA	NA
1 st conviction – Sell, distribute, or possess with intent to distribute methamphetamine	111	27%	18%	7 mos.	55%	2 yrs.
2 nd conviction – Sell, distribute, or possess with intent to distribute methamphetamine	2	50%	0%	NA	50%	4.3 yrs.
1 st conviction – Manufacture, sell, distribute, or possess with intent to distribute Schedule I/II drug other than methamphetamine	3,041	22%	16%	7 mos.	62%	2 yrs.
2 nd conviction – Manufacture, sell, distribute, or possess with intent to distribute Schedule I/II drug other than methamphetamine	238	8%	4%	8 mos.	88%	3.5 yrs.

Note: The median sentence is the middle value, above and below which lie an equal number of cases.

Data includes only completed acts.

Data Source(s): Pre/Post-Sentence Investigation (PSI) and Sentencing Guidelines (SG) databases

Impact of Proposed Legislation:

State adult correctional facilities. The proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. While the magnitude of the potential impact cannot be determined, it is likely to be small during the six-year forecast window required by § 30-19.1:4 for fiscal impact assessments. Two of the proposed mandatory minimums apply to second and third methamphetamine manufacturing convictions. The impact of the proposal will depend upon the degree to which methamphetamine offenders are convicted under the new provision specific to the manufacture of methamphetamine (§ 18.2-248(C1)) in lieu of the generic provision relating to the manufacture, sale, distribution or possession with intent to distribute a Schedule I/II drug (§ 18.2-248(C)).

The impact of increasing mandatory minimum sentences for drug kingpins from 20 to 25 years in methamphetamine cases will have no impact during the next six years. Assuming no increase in the rate of prosecution, any impact will occur beyond the six-year forecast window required by § 30-19.1:4.

Local adult correctional facilities. The proposal is not expected to increase the local-responsible (jail) population.

Adult community corrections programs. Because the proposal does not create new crimes or mandate longer periods of community supervision, it is unlikely that the proposal will have an impact on community corrections resources.

Virginia's sentencing guidelines. Convictions for manufacturing methamphetamine (§ 18.2-248(C1)) are not covered by Virginia's sentencing guidelines as the primary (or most serious) offense but may augment the guidelines recommendation if a covered offense is the most serious at conviction. 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 term.

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.