



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 335 (Patron – Obenshain)

LD #: 06-3386782

Date: 11/22/2005

Topic: Modification of sentencing guidelines for methamphetamine

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$1,327,143 (55 beds)
- **Local Adult Correctional Facilities:**
-\$43,475 (-5 beds)
- **Adult Community Corrections Programs:**
None (\$0)

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

Summary of Proposed Legislation:

The proposal adds § 17.1-807 to modify the sentencing guidelines for crimes involving methamphetamine. The proposed legislation mandates that the sentencing guidelines applicable to cocaine offenses be used in cases involving any substance that contains any quantity of methamphetamine. Currently, methamphetamine is treated by the sentencing guidelines in the same manner as any Schedule I or II drug other than cocaine.

Since July 1997, Virginia's sentencing guidelines have contained enhancements designed to increase the sentence recommendation in cases involving unusually large amounts of cocaine. The guidelines enhancements for selling cocaine increase the sentence recommendation by three years in cases involving 28.35 grams (1 ounce) or more but less than 226.8 grams (½ pound) of cocaine and by five years if the amount of cocaine is 226.8 grams (½ pound) or more. In cases with less than 28.35 grams of cocaine, no enhancement applies. The quantity enhancements for cocaine were grounded in historical research on judicial sentencing of felony drug cases in the Commonwealth.

Since July 2002, Virginia's sentencing guidelines have included a risk assessment component applicable to drug offenders, including violations involving cocaine. Pursuant to a legislative directive and after years of empirical study and pilot testing, the Sentencing Commission incorporated its nonviolent offender risk assessment instrument into the guidelines beginning July 1, 2002. The risk assessment instrument is completed for drug, fraud and larceny offenders who are recommended for an active term of incarceration by the sentencing guidelines and who satisfy the eligibility criteria established by the Commission. When a risk assessment worksheet is completed, offenders scoring 38 points or less on the scale are recommended for sanctions other than traditional incarceration. Judges are considered in compliance with the guidelines if they sentence within the recommended incarceration range or if they follow the recommendation for alternative punishment. However, offenders with any current or prior convictions for violent felonies (defined in § 17.1-803) and offenders who sell 28.35 grams (1 ounce) or more of cocaine are excluded from risk assessment consideration.

Analysis:

Although judges can utilize Virginia's discretionary sentencing guidelines as a tool in formulating sentences in most cases, the *Code of Virginia* specifies several mandatory minimum penalties for offenses involving Schedule I or II drugs, including methamphetamine. An offender who receives a third or subsequent conviction for selling a Schedule I or II drug is now subject to a three-year mandatory-minimum sentence (§ 18.2-248(C)), as is an offender who transports an ounce or more of a Schedule I or II drug into the Commonwealth (§ 18.2-248.01). An offender convicted a second time under § 18.2-248.01 for transporting an ounce or more of a Schedule I or II drug into the Commonwealth must serve a minimum of ten years.

Additional mandatory penalties apply to offenses involving larger quantities of drug. Under § 18.2-248(H), selling, manufacturing, distributing or possessing with intent to distribute 100 grams or more of methamphetamine or 200 grams or more of a mixture containing methamphetamine is a felony carrying a term of 20 years to life. The 20-year mandatory, minimum sentence can be suspended only if the offender meets all five of the following conditions: (1) the offender has no violent prior record; (2) the current offense did not involve violence or a firearm; (3) the current offense did not result in a serious injury or death; (4) the offender was not a leader in the current offense, nor a part of a continuing criminal enterprise; and (5) the offender cooperates to the fullest extent. This statute may be applied even when the offender has not been observed actively trying to manufacture, sell or distribute the methamphetamine. Under Virginia case law, when the intent to distribute is based upon circumstantial evidence, *Hunter v. Commonwealth* (213 Va. 569, also see *Dukes v. Commonwealth*, 227 Va. 119) found that "... quantity, when greater than the supply ordinarily possessed by a narcotics user for his personal use, is a circumstance which, standing alone, may be sufficient to support a finding of intent to distribute."

Under § 18.2-248(H1), selling, manufacturing, distributing or possessing with intent to distribute 100 grams to less than 250 grams of methamphetamine or 200 grams to less than one kilogram of a methamphetamine mixture as part of a continuing criminal enterprise is a felony carrying a penalty of 20 years to life. The 20-year mandatory minimum sentence cannot be suspended for any reason.

Under § 18.2-248(H2), selling, manufacturing, distributing or possessing with intent to distribute 250 or more grams of methamphetamine or one kilogram or more of a methamphetamine mixture as part of a continuing criminal enterprise is a felony carrying a penalty of life. The life sentence is mandatory, but can be reduced to 40 years only under the condition of substantial cooperation with law enforcement.

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 statewide than other Schedule I or II drugs. According to calendar year (CY) 2003 Pre/Post-Sentence Investigation (PSI) data, more than 80% of state Schedule I or II drug conviction 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.

According to fiscal year (FY) 2002 and 2003 PSI data, there were 138 convictions under § 18.2-248(C) for selling, manufacturing, distributing or possessing with intent to distribute methamphetamine. Data indicate that approximately 14% of these cases involve an ounce or more of the drug, the minimum quantity necessary to qualify for guidelines enhancements applicable in cocaine cases.

Impact of Proposed Legislation:

State adult correctional facilities. By revising the sentencing guidelines recommendations applicable in methamphetamine cases, the proposed legislation will have an impact on the state-responsible (prison) bed space needs of the Commonwealth. Because cases involving large quantities of drugs are often processed through the federal court system and are not reflected in Virginia statistics, it is unclear if the proposal will impact the number of offenders prosecuted in Virginia's circuit courts in the future.

If offenders convicted in state courts for selling methamphetamine are treated similarly to offenders with the same amount of cocaine, the impact is estimated to be 55 beds by FY2012. The impact reflects the fact that offenders selling more than 28.35 grams of methamphetamine will receive longer sentence recommendations under the guidelines and will no longer be eligible for risk assessment consideration.

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

FY07	FY08	FY09	FY10	FY11	FY12
8	25	37	45	51	55

Local adult correctional facilities. The proposal will result in a reduced need for local-responsible (jail) bed space as some offenders who receive drug quantity enhancements under the guidelines will receive prison sentences rather than jail terms. Based on the same methodology, there will be a reduction of five jail beds statewide, resulting in a savings to the state of \$43,475 (using FY2004 jail inmate costs) for reimbursement to localities. There would be an additional statewide savings to the localities of \$40,077 for the same beds.

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

FY07	FY08	FY09	FY10	FY11	FY12
-2	-4	-4	-4	-4	-5

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. 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. The sentencing guidelines would need to be modified to include methamphetamine wherever there is a specific reference to cocaine.

Juvenile correctional centers. Sentencing guidelines for the adult system do not apply to juvenile offenders remanded to the Department of Juvenile Justice (DJJ).

Juvenile detention facilities. Sentencing guidelines for the adult system do not apply to juvenile offenders remanded to juvenile detention facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$1,327,143 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 treated as applying to all parole ineligible persons sentenced from that date onward.
2. Release dates for state-responsible felony convictions 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 or II drug sale offenses, this rate was 11.4%. Release dates for local-responsible felony convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by felons sentenced in FY2003 to local jails; this rate was 89.7%.
3. Sentences for persons convicted under § 18.2-248(C) with 28.35 grams or more of methamphetamine were randomly drawn from offenders convicted under the same statute with 28.35 grams or more of cocaine with the appropriate enhanced sentence recommendation (36 or 60 months).

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