



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 37 (Patron – Reynolds)

LD#: 06-3544808

Date: 12/14/2005

Topic: Distribution of cocaine

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$36,818,439 (1,536 beds)
- **Local Adult Correctional Facilities:**  
-\$696,705 (-73 beds)
- **Adult Community Corrections Programs:**  
Cannot be determined

- **Juvenile Correctional Centers:**  
Cannot be determined
- **Juvenile Detention Facilities:**  
Cannot be determined

#### Summary of Proposed Legislation:

The proposal amends § 18.2-248 by adding subsection C2 to provide mandatory minimum penalties for offenders convicted of distribution of cocaine. Any person who violates this section with respect to the distribution of cocaine shall, in addition to any other punishment provided therefore, receive a mandatory minimum term of imprisonment of five years for a first conviction, 10 years for a second or subsequent conviction, and 15 years if the defendant has previously been convicted of a second or subsequent offense. For the purposes of imposing a mandatory minimum sentence based on a prior conviction under this subsection, each conviction shall have occurred on a different date.

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. When a person is convicted of a third or subsequent offense under subsection C, he shall 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 to be served consecutively with any other sentence. Other subsections cover enhancements based on quantity of the drug.

#### Analysis:

According to fiscal year (FY) 2002 and 2003 Pre/Post Sentence Investigation (PSI) data, 812 offenders were convicted of distribution of cocaine under § 18.2-248(C). Of these, 415 (51%) received state-responsible (prison) terms with a median sentence of two years. Of the remaining offenders, 229 (28%) received local-responsible (jail) sentences and 168 (21%) were sentenced to probation.

In addition, 317 offenders were convicted of a second or subsequent violation of § 18.2-248(C) involving cocaine and 24 were convicted of a third or subsequent violation.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By adding mandatory minimum penalties for violations of § 18.2-248(C) involving distribution of cocaine, the proposal will result in an increased need for state-responsible (prison) bed space. The impact is estimated to be 1,536 additional prison beds by 2012.

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

FY07	FY08	FY09	FY10	FY11	FY12
69	284	587	944	1315	1536

**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 73 jail beds statewide, resulting in a savings to the state of \$696,705. There would be an additional statewide savings to the localities of \$642,250 for the same beds.

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

FY07	FY08	FY09	FY10	FY11	FY12
-34	-67	-70	-71	-72	-73

**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.** Convictions under the current § 18.2-248(C) are covered as primary offenses under the Drug Schedule I/II guidelines. 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 would have no fiscal impact unless a juvenile is sentenced with a blended sentence (commitment to DJJ until age 21, then transfer to the Department of Corrections (DOC)), and the mandatory sentence occurs upon transfer to DOC.

**Juvenile detention facilities.** The Department of Juvenile Justice (DJJ) reports that the proposal would not be 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 \$36,818,439 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.**

**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 distribution under § 18.2-248(C) with cocaine were replaced with the appropriate mandatory minimum (5 years for a first conviction, 10 years for a second conviction, 15 years for a third or subsequent conviction).
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).

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