



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 553

Amendment in the Nature of a Substitute

(Patron Prior to Substitute – Stolle)

LD#: 06-1377820

Date: 1/26/2006

Topic: Distribution of Schedule I or II drugs or marijuana

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$74,218 (3 beds)
- **Local Adult Correctional Facilities:**
None (\$0)
- **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 and 18.2-248.1 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. 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 five 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”)
- 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.

The mandatory minimum term of imprisonment to be imposed for a violation of § 18.2-248(C) will not apply in cases where the court finds that the defendant satisfies several conditions identical to the exemptions listed in subsection H of § 18.2-248:

- a. no prior conviction for a violent offense listed in subsection C of § 17.1-805;
- b. no use of violence or credible threats of violence or possession of a firearm or other dangerous weapon in connection with the current offense;
- c. current offense did not result in death or serious bodily injury to any person;
- d. defendant was not an organizer or supervisor of others in the offense and was not engaged in a continuing criminal enterprise; and
- e. defendant has truthfully provided to the Commonwealth all information and evidence concerning the current offense.

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. The manufacture of marijuana is also punishable by imprisonment of not less than five nor more than 30 years. 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.

Analysis:

According to fiscal years (FY) 2002 and 2003 Pre/Post Sentence Investigation (PSI) data, 19 offenders were convicted of a third or subsequent violation of § 18.2-248(C). These offenders received state-responsible (prison) sentences with a median sentence of five years.

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 3 additional prison beds by 2012.

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

FY07	FY08	FY09	FY10	FY11	FY12
0	0	1	1	3	3

Local adult correctional facilities. The proposal is expected to have no impact on the need for local-responsible (jail) bed space as these offenders will be sentenced to prison terms.

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.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$74,218 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 and 18.2-248.1 were replaced with the appropriate mandatory minimum specified by the proposal.

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