



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 405

Amendment in the Nature of a Substitute (Patron Prior to Substitute – Puckett)

LD#: 08-9044300

Date: 1/30/2008

Topic: Prescription drugs

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$606,325 (22 beds)
- **Local Adult Correctional Facilities:**
\$44,245 (4 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, 18.2-258.1, 54.1-3434.1, and 54.1-3434.2, relating to prescription drugs. The proposal would increase the penalty for a second or subsequent conviction for prescription fraud under § 18.2-258.1 from a Class 6 to a Class 5 felony. Section 18.2-258.1 was last amended in 1997 to include “first offender” provisions. These provisions specify that any person not previously convicted of an offense related to narcotic or hallucinogenic drugs or marijuana may be placed on probation subject to terms and conditions; upon fulfillment of the terms and conditions of probation, the court finds the offender guilty of a Class 1 misdemeanor in lieu of the original felony.

The proposal also outlines several procedural requirements with respect to the registration of nonresident pharmacies under §§ 54.1-3434.1 and 54.1-3434.2. One of the proposed provisions defines the act of dispensing a prescription that was not written pursuant to a bona-fide practitioner-patient relationship as unlawful distribution of a controlled substance in violation of § 18.2-248.

The proposal amends § 18.2-248 to state that a violation of this section involving a Schedule VI controlled substance, or an imitation thereof, is a Class 1 misdemeanor. This offense (per § 18.2-12) is currently punished as a Class 1 misdemeanor.

Analysis:

According to calendar year (CY) 2005 and CY2006 Local Inmate Data System (LIDS) data, 36 individuals held in jail pre- or post-trial were convicted of a Class 1 misdemeanor under § 18.2-248(A) for the sale or distribution of a Schedule VI controlled substance. For 18 defendants, this offense was the primary (most serious) offense. Of these 18 offenders, 17 (94.4%) received a jail sentence, with a median term of 3 months, while one offender was sentenced to probation with no active term of incarceration.

According to fiscal year (FY) 2006 and FY2007 Pre/Post-Sentence Investigation (PSI) data, 357 offenders were convicted of prescription fraud under § 18.2-258.1 as their primary (most serious) offense at sentencing. The most frequently observed offense was obtaining drugs by forgery or fraud (§ 18.2-258.1(A)), which accounted for 89% of the cases. Only 8% of these offenders were given a state-responsible (prison) term, with a median sentence of 1.5 years; 12% were given a local-responsible (jail) term with a median sentence of 3.0 months, and the remaining 80% received probation with no active incarceration term to serve (including those placed under first-offender provisions). Uttering a false or forged prescription accounted for another 9% of the prescription fraud cases. Only 9% of these offenders received a prison term (median sentence 1.2 years); 18% received jail terms (median sentence of 3 months) and 73% were sentenced to probation (including those placed under first-offender provisions). Of the 357 offenders convicted under § 18.2-258.1, 148 were convicted of a second or subsequent offense (due to prior convictions or multiple convictions in the same sentencing events) and would be subject to the proposed Class 5 penalty enhancement.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal will establish new felony crimes under the proposed § 54.1-3434.1. While this aspect of the proposal may increase state-responsible (prison) bed space needs, the number of additional felony convictions that may result cannot be estimated. Therefore, the impact of this portion of the proposal cannot be quantified. The proposal also increases the penalty for a second or subsequent violation of § 18.2-258.1 from a Class 6 to a Class 5 felony. The impact of this change is projected to be 22 beds by 2014. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$606,325.

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

FY09	FY10	FY11	FY12	FY13	FY14
4	13	18	21	22	22

Local adult correctional facilities. The proposed change to § 18.2-258.1 will also increase the demand for local-responsible (jail) beds. The impact is estimated to be an increase of 4 beds by FY2014 (state costs: \$44,245; local costs: \$44,381).

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

FY09	FY10	FY11	FY12	FY13	FY14
3	4	4	4	5	4

Adult community corrections resources. Because the proposal may result in additional felony offenders on community supervision, the proposal may increase the need for state community corrections resources. However, the proposal will also delay the need for services for some felony offenders affected by the proposal, as they will be serving longer incarceration terms than those currently served by offenders convicted of prescription fraud. The net impact on state community corrections programs cannot be quantified.

Virginia's sentencing guidelines. Felony convictions for prescription fraud under § 18.2-258.1 are covered by the sentencing guidelines as the primary (most serious) offense. No adjustment to the guidelines would be necessary under the proposal.

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.

Juvenile detention facilities. The Department of Juvenile Justice 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 \$606,325 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 of Public Safety's Committee on Inmate Forecasting in 2007.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety's Committee on Inmate Forecasting and approved in July 2007.
3. Cost per prison bed was assumed to be \$27,452 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 FY2006 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.42 per day or \$10,381 per year. The local cost was calculated by using the daily expenditure cost of \$61.48 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 \$28.51 per day or \$10,413 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*** Note: The Compensation Board does not include data from jails that were not in operation for the entire fiscal year. Middle River Regional Jail was excluded because it opened during FY2006, while Augusta and Tazewell Counties were excluded because their jails were closed during the same time period; Augusta County now participates in the new Middle River Regional Jail and Tazewell County now participates in the Southwest Virginia Regional Jail.

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2008, 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, 2006. For drug crimes other than those involving possession or distribution of marijuana or Schedule I or II drugs, this rate was 11.68%.
3. To gauge the impact of the proposed penalty ranges, offenders convicted of second or subsequent prescription fraud under § 18.2-258.1 were assumed to receive sentences similar to offenders currently convicted of possession of a Schedule I or II controlled substance (currently a Class 5 felony). Offenders convicted of multiple counts of prescription fraud that were handled together in the same sentencing event were treated as having subsequent convictions based on *Able v. Commonwealth*, 16 Va. App. 542, 431 S.E.2d 337 (1993).

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