



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1807

(Patron – Loupassi)

ID#: 08-0949606

Date: 10/16/2008

Topic: Transporting 1 ounce to 5 pounds of marijuana into the Commonwealth

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
None

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

Summary of Proposed Legislation:

The proposal amends § 18.2-248.01 to make it a Class 6 felony for any person to transport one ounce to five pounds of marijuana into the Commonwealth with the intent to sell or distribute the drug. Currently, this section of the *Code* provides a separate penalty, apart from possession with the intent to distribute marijuana, for transporting larger amounts of marijuana (five pounds or more) into the Commonwealth. Under existing *Code*, however, the act of transporting one ounce to five pounds of marijuana into the Commonwealth can be prosecuted as possession with intent to distribute, a Class 5 felony, under § 18.2-248.1.

Analysis:

According to fiscal year (FY) 2006 and FY2007 Pre/Post Sentence Investigation (PSI) data, there were 1,674 convictions under § 18.2-248.1 for the sale, distribution or possession with the intent to distribute over ½ ounce but less than 5 pounds of marijuana (a Class 5 felony). Most of these offenders received some term of incarceration: 44% received a local-responsible (jail) sentence and 26% were given a state-responsible (prison) term. For offenders sentenced to prison, the median sentence length was two years. It is not known how many of these cases also involved the transportation of the drug into the Commonwealth.

In the same two years of PSI data, there were only 14 cases sentenced for transporting five or more pounds of marijuana (an unclassified felony with a statutory maximum of 40 years), while there were 87 sentenced for distribution of five or more pounds of marijuana (an unclassified felony with a statutory maximum of 30 years).

Impact of Proposed Legislation:

State adult correctional facilities. Because the proposal defines a new Class 6 felony offense, the proposal could increase the state-responsible (prison) bed space needs of the Commonwealth. However, the offense described in the proposal can be prosecuted currently as a Class 5 felony under an

existing statute (and the proposal does not specify that the new offense must constitute a separate and distinct offense requiring additional punishment). The effect of the proposal on the charging practices of prosecutors is not known and the number of offenders who would ultimately be convicted under the provision cannot be established. Therefore, the impact of the proposal on state-responsible bed space cannot be determined.

Local adult correctional facilities. The proposal may also have an impact on local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be determined.

Adult community corrections resources. Because offenders targeted by the proposal could be convicted under an existing felony statute, the proposal is not expected to increase the overall number of felony offenders placed on community supervision. Changes in charging practices and sentencing patterns could affect the timing of when community corrections resources would be needed for individual offenders.

Virginia's sentencing guidelines. Crimes committed under subsection B § 18.2-248.01 are not covered by the guidelines when it is the primary (most serious) offense in the case. Such a conviction, however, could augment the guidelines recommendation as an additional offense if the most serious offense at sentencing is covered by the guidelines. No adjustment to the sentencing guidelines would be necessary under the proposal.

Juvenile correctional centers. By defining a new felony, the proposal could result in additional commitments to the Department of Juvenile Justice (DJJ). Juveniles affected by the proposal, however, currently can be charged under an existing felony provision. The net impact of the proposal on the number of juveniles committed to DJJ and their length-of-stay with the Department is not known; therefore, the impact of the proposal cannot be determined.

Juvenile detention facilities. According to the Department of Juvenile Justice, the impact of the proposal on the bed space needs of juvenile detention facilities cannot be determined.

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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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