

Department of Planning and Budget

2009 Fiscal Impact Statement

1. Bill Number HB 2362

House of Origin ☐ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☒ Enrolled

2. Patron **Gilbert**

3. Committee **Passed both houses**

4. Title **Drug offenses**

5. Summary/Purpose:

Under current law, a second or subsequent conviction of manufacturing or distributing a Schedule I or II drug is subject to a higher penalty than the first conviction. An offender convicted of a first offense would be subject to a sentence of 5 to 40 years in prison. A second or subsequent offense carries a sentence of 5 years to life imprisonment. A third or subsequent offense, if the offender had two or more such convictions prior to the current offense, would also be punishable by a sentence of 5 years to life imprisonment, but would carry a five-year mandatory minimum sentence.

The proposed legislation would change the provision relating to a second or subsequent offense of distribution of a Schedule I or II drug. Under the new provisions, the higher penalty would apply to a second conviction in the following circumstances:

- a. the warrant, indictment, or information alleged that the defendant had been before convicted of the offense or of a similar offense in any other jurisdiction that would be a felony if committed in Virginia, and
- b. the prior conviction occurred before the date of the offense alleged in the warrant, indictment, or information.

6. Fiscal Impact estimate: Final. See Item 8.

7. Budget amendment necessary: None.

8. Fiscal implications:

The proposed legislation could affect the number of persons housed in prison in two ways. The current law does not explicitly include convictions under similar statutes in other states in establishing the criteria for the more severe penalties for second or subsequent convictions. The proposed legislation clarifies that prior convictions in other states should be counted. To the extent that these other convictions have not been counted in the past, the legislation could result in an increase in the number of offenders convicted of a second offense and receiving a longer sentence.

On the other hand, a judicial interpretation of the current provision has held that, under current law, the enhanced penalty for a second conviction can be applied whenever the offender is being sentenced for multiple counts for the offense in the same sentencing hearing. Furthermore, another court decision has held that the enhanced penalty for a second conviction can be applied at the discretion of the judge or jury and a prior conviction does not have to have been alleged in the warrant, indictment, or information. The requirements in the proposed legislation that the warrant, indictment, or information contain an allegation of a prior conviction and that the prior conviction must have occurred before the date of the current offense may result in a decrease in the number of offenders eligible for the enhanced penalty.

Due to the lack of data needed to determine the net effect of these provisions, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined.

9. Specific agency or political subdivisions affected:

Department of Corrections

10. Technical amendment necessary: None.

11. Other comments: None.

Date: {3/12/2009} rah

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