



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1766 (Patron – Crockett-Stark)

LD#: 11101004

Date: 12/2/2010

Topic: Allowing children or incapacitated or helpless persons to be present where components to manufacture methamphetamine are found

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 874 of the 2010 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposed legislation amends § 18.2-248.02. Under the current provision, it is unlawful for an adult to allow a child over whom he has a custodial relationship to be present during the manufacture of methamphetamine. The proposal:

- Removes the requirement of a custodial relationship between the adult and the child whom he allows to be present while methamphetamine is manufactured;
- Expands the provision to make it unlawful to allow a mentally incapacitated or physically helpless person to be present;
- Expands the provision beyond the manufacture of methamphetamine to include circumstances in which the components or precursor substances for manufacturing methamphetamine are found; and
- Creates a mandatory minimum penalty of five years for this offense.

Analysis:

According to the Circuit Court Automated Information System (CAIS) for fiscal year (FY) 2009 and FY2010, four offenders were convicted under § 18.2-248.02 for allowing a child to be present during the manufacture or attempted manufacture of methamphetamine. All were sentenced to state-responsible (prison) terms ranging from 1.0 to 18.8 years for this offense; however, only one of the four offenders was sentenced below the proposed mandatory minimum of five years. In addition to this offense, all four offenders were convicted of at least one additional charge related to the distribution of a Schedule I/II drug. The total effective sentence for all the offenses in the sentencing event resulted in prison terms that ranged from 14.8 to 54.7 years (the median sentence was 28.7 years).

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of an existing felony (to include other specified persons as well as additional circumstances under which someone could be prosecuted for this offense), the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The number of additional felony convictions that may result from this aspect of the proposal cannot be estimated; therefore, the magnitude of the impact cannot be determined. The introduction of a mandatory minimum penalty may affect the sentences of those convicted under this provision; however, this aspect of the proposal will likely have a minimal impact during the six-year window required by § 30-19.1:4 for fiscal impact statements, as the majority of offenders convicted under the current statute receive sentences of at least five years.

Local adult correctional facilities. The proposal may also increase local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in additional felony convictions and subsequent supervision requirements, the proposal may affect adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. Convictions under subsection § 18.2-248.02 are not covered by the sentencing guidelines as the primary (most serious) offense. Such a conviction, however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal will not increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. According to the Department of Juvenile Justice (DJJ), the proposal will not affect juvenile detention facility bed space needs.

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; therefore, Chapter 874 of the 2010 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.