Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 508

Reenrolled

(Patron Prior to Reenrollment – Garrett, T.S.)

LD#: Reenrolled **Date:** 4/18/2012

Topic: Regulation of synthetic cannabinoids and other compounds

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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 890 of the 2011 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of $50,000.

Summary of Proposed Legislation:

The proposal amends §§ 18.2-248.1:1 and 54.1-3446, relating to the regulation of synthetic cannabinoids and other chemical compounds. Synthetic cannabinoids, also known as synthetic marijuana, K2, spice, or Mr. Smiley, are dried herbs sprayed with a chemical compound that, when smoked, creates a high similar to marijuana. However, synthetic cannabinoids can have numerous side effects that are not traditionally associated with marijuana, including rapid heart rate and seizures. Synthetic stimulants sold under the guise of "bath salts" are comprised of a class of chemicals perceived as mimics of cocaine, LSD, MDMA (ecstasy), and/or methamphetamine.

The 2011 General Assembly passed emergency legislation (HB1434/SB745) adding § 18.2-248.1:1 to the *Code of Virginia* to create specific penalties for possessing, selling, giving, distributing, or possessing with intent to distribute synthetic cannabinoids. This legislation also added synthetic cannabinoids to numerous other sections of the *Code* relating to controlled substances and marijuana. First offense possession of synthetic cannabinoids is a Class 1 misdemeanor. Selling, giving, distributing, or possessing with intent to distribute synthetic cannabinoids is a Class 6 felony punishable by imprisonment from one to five years. Distribution of synthetic cannabinoids as an accommodation is a Class 1 misdemeanor; if distributed to an inmate, the offense is a Class 4 felony punishable by imprisonment from two to ten years. Manufacture of synthetic cannabinoids is a felony punishable by imprisonment from five to thirty years. With some exceptions, the penalties for offenses involving synthetic cannabinoids mirror those for the corresponding crimes involving marijuana.

The 2011 legislation also amended § 54.1-3446 to include two synthetic stimulants, 3,4-methylenedioxypyrovalerone (MDPV) and 4-methylephedrone (mephedrone or 4-MMC), as Schedule I drugs in Virginia's Drug Control Act. Currently, possession of a Schedule I or II drug is a Class 5 felony, punishable by imprisonment of 1 to 10 years. Selling, distributing, or manufacturing a Schedule I or II drug, or possessing such a drug with the intent to sell, distribute, or manufacture, is

punishable by imprisonment from five to forty years with a maximum fine of $500,000. The maximum sentence for a second or third conviction of selling, distributing, etc., is life imprisonment, with the third offense carrying a mandatory minimum sentence of five years. Distribution of a Schedule I or II drug by accommodation is a Class 5 felony. The *Code* includes additional felonies for transporting a Schedule I or II drug into the Commonwealth, distributing a Schedule I or II drug to a person under the age of 18, distributing near schools or other specified properties, and for possessing a Schedule I or II drug while possessing a firearm.

Despite these changes, manufacturers continue to circumvent state law by slightly altering the chemical composition of the synthetic cannabinoids. The reformulated substances are then substituted for the currently banned ones. In July and August 2011, Virginia's state forensic laboratory tested 468 samples received from law enforcement agencies statewide. Only 101 of these samples contained currently banned substances.[1]

The proposed legislation accounts for the potential for innovation regarding the chemicals comprising synthetic cannabinoids and other synthetic stimulants. The proposal expands the definition of synthetic cannabinoids and includes language so that similarly constituted synthetic drugs shall be subject to the same criminal penalties as for synthetic cannabinoids. Currently, any drug not listed in § 18.2-248.1:1 or the Drug Control Act that is privately compounded, with the specific intent to circumvent the criminal penalties for synthetic cannabinoids, to emulate or simulate the effects of synthetic cannabinoids, through chemical changes such as the addition, subtraction or rearrangement of a radical or substituent in the formula, would be subject to the same criminal penalties as synthetic cannabinoids.

Finally, the proposal amends § 54.1-3446 to add a number of synthetic stimulants ("bath salts") and other chemical compounds, including 25-I, to the list of Schedule I controlled substances in Virginia's Drug Control Act.

Analysis:

As of March 1, 2011, at least 18 states have made it illegal to possess or sell synthetic marijuana or cannabinoids. On this date, the US Drug Enforcement Agency (DEA) issued an order temporarily controlling five chemicals used to make synthetic marijuana. On October 21, 2011, the DEA took similar action with regard to three synthetic stimulants (Mephedrone, 3,4-methylenedioxypyrovalerone (MDPV), and Methylone) used to make products marketed as "bath salts" and "plant food". These chemicals will be designated by the DEA as Schedule I substances for at least one year while the DEA and the Department of Health and Human Services study whether they should be permanently controlled. Local ordinances to ban synthetic marijuana have also been passed in several localities across the US.

The emergency legislation relating to crimes involving synthetic cannabinoids was signed by the governor and became effective as of March 23, 2011; as a result, a limited amount of sentencing data pertaining to these crimes has been observed in the databases available to the Commission. According to fiscal year (FY) 2011 data from the General District Court Automated Information System (CAIS), five offenders were convicted of a first offense for possession of synthetic cannabinoids as their primary (most serious) offense at sentencing. All of these offenders were sentenced to probation with no active term of incarceration to serve. No felony convictions for crimes involving synthetic cannabinoids were observed in FY2011 Circuit Court CAIS data.

[1] Justin Jouvenal, "Spice Makers Alter Recipes to Sidestep State Laws Banning Synthetic Marijuana," Washington Post, December 28, 2011.

Charges related to synthetic marijuana filed in Virginia's general district, circuit, and juvenile and domestic relations courts from March through November 2011 are presented below by court and jurisdiction.

Criminal Charges related to Synthetic Marijuana
Filed in General District Court
March – November 2011

F = Felony
M = Misdemeanor

	Convicted			Not Convicted			Pending			Total
	F	M	Total	F	M	Total	F	M	Total	
Accomack	0	0	0	0	0	0	0	1	1	1
Albemarle	0	1	1	0	0	0	0	1	1	2
Alexandria	0	0	0	0	0	0	0	1	1	1
Arlington	0	0	0	0	0	0	0	1	1	1
Augusta	0	0	0	0	0	0	0	3	3	3
Bristol	0	0	0	0	1	1	0	0	0	1
Caroline	0	0	0	1	0	1	0	1	1	2
Chesapeake	0	0	0	5	0	5	0	0	0	5
Chesterfield	0	4	4	0	10	10	4	4	8	22
Colonial Heights	0	0	0	0	2	2	0	3	3	5
Dickenson	0	0	0	0	1	1	0	3	3	4
Fairfax	0	1	1	0	6	6	7	8	15	22
Falls Church	0	0	0	0	0	0	2	0	2	2
Fauquier	0	0	0	0	2	2	0	1	1	3
Frederick	0	0	0	0	1	1	0	1	1	2
Fredericksburg	0	0	0	0	1	1	0	0	0	1
Hampton	0	1	1	1	3	4	0	1	1	6
Hanover	0	2	2	0	0	0	4	1	5	7
Henrico	0	1	1	0	2	2	0	0	0	3
King George	0	0	0	0	0	0	0	1	1	1
Loudoun	0	0	0	0	1	1	1	1	2	3
Madison	0	0	0	0	2	2	0	0	0	2
Newport News	0	1	1	0	4	4	1	2	3	8
Page	0	0	0	0	1	1	0	2	2	3
Prince William	0	0	0	0	1	1	1	1	2	3
Pulaski	0	1	1	0	2	2	0	0	0	3
Richmond	0	1	1	0	4	4	0	0	0	5
Roanoke	0	0	0	0	1	1	0	0	0	1
Rockbridge	0	0	0	0	0	0	0	1	1	1
Rockingham	0	1	1	0	2	2	1	1	2	5
Russell	0	1	1	1	0	1	0	2	2	4
Scott	1	5	6	0	0	0	0	15	15	21
Shenandoah	0	0	0	0	1	1	0	1	1	2
Spotsylvania	0	1	1	0	6	6	0	7	7	14
Stafford	0	1	1	0	0	0	0	3	3	4
Staunton	0	1	1	0	1	1	0	1	1	3
Sussex	1	0	1	0	0	0	0	0	0	1
Tazewell	0	0	0	0	0	0	0	1	1	1
Virginia Beach	0	0	0	0	1	1	0	2	2	3
Washington	0	0	0	0	2	2	1	2	3	5
Williamsburg	0	0	0	0	1	1	0	2	2	3
Wise	0	2	2	0	0	0	0	5	5	7
Wythe	0	3	3	0	1	1	0	1	1	5
York	0	0	0	0	3	3	0	2	2	5
Total	2	28	30	8	63	71	22	83	105	206

Source: Supreme Court of Virginia – Judicial Planning Department

Criminal Charges related to Synthetic Marijuana
Filed in Circuit Court
March – November 2011

F = Felony
M = Misdemeanor

	Convicted	Not Convicted	Total
Fauquier	0	1	1
Rockingham	2	0	2
Total	2	1	3

Source: Supreme Court of Virginia – Judicial Planning Department

Criminal Charges related to Synthetic Marijuana
Filed in Juvenile & Domestic Relations Court
March – November 2011

DF = Delinquency Felony
DM = Delinquency Misdemeanor

	Convicted		Not Convicted		Pending			Total
	DM	Total	DM	Total	DF	DM	Total	
Alexandria	0	0	0	0	0	1	1	1
Bristol	0	0	0	0	0	1	1	1
Chesterfield	2	2	7	7	0	4	4	13
Colonial Heights	0	0	0	0	0	2	2	2
Essex	0	0	0	0	0	1	1	1
Fairfax	0	0	2	2	0	0	0	2
Falls Church	0	0	0	0	0	1	1	1
Franklin	1	1	0	0	0	0	0	1
Hanover	1	1	0	0	0	0	0	1
Henrico	0	0	0	0	0	1	1	1
Richmond	0	0	0	0	0	1	1	1
Rockingham	0	0	1	1	0	0	0	1
Russell	0	0	0	0	0	1	1	1
Scott	0	0	1	1	2	3	5	6
Spotsylvania	0	0	2	2	0	1	1	3
Stafford	0	0	0	0	0	1	1	1
Winchester	0	0	0	0	0	1	1	1
Wythe	0	0	1	1	0	0	0	1
Total	4	4	14	14	2	19	21	39

Source: Supreme Court of Virginia – Judicial Planning Department

Sentencing information is available for cases involving drugs currently listed in Schedules I or II. According to fiscal year (FY) 2010 and FY2011 Sentencing Guidelines (SG) data, there were 12,571 felony sentencing events involving Schedule I or II drug crimes. In these cases, the Schedule I or II drug crime was the primary (or most serious) offense. Approximately 55% of these convictions involved simple possession. Nearly half of the offenders convicted of simple possession were sentenced to a term of incarceration: 38% were given a local-responsible (jail) term and 11% received a state-responsible (prison) term. For possession offenders committed to prison, the median sentence was 1.5 years. Offenders convicted for selling, distributing, etc., (§ 18.2-248(C)) were much more likely to be incarcerated. While 24% were sentenced to serve time in jail, 64% received a prison term. For offenders committed to prison for a sales or distribution-related offense, the median sentence was 2.3 years.

Impact of Proposed Legislation:

State adult correctional facilities. The proposed legislation expands the definition of synthetic cannabinoids, including language so that similarly constituted formulations shall be subject to the same criminal penalties as for synthetic cannabinoids. The proposal also adds a number of synthetic stimulants (popularly marketed as "bath salts") and other compounds to Schedule I of Virginia's Drug Control Act. Thus, the proposal may increase the need for state-responsible (prison) beds. The number of additional felony convictions that could result from the proposal cannot be estimated; therefore, the impact of the proposal cannot be determined.

Local adult correctional facilities. Local-responsible (jail) bed space needs may increase due to the expansion of felony and misdemeanor crimes associated with synthetic cannabinoids and Schedule I controlled substances; however, the magnitude of the impact cannot be determined.

Adult community corrections resources. Because the proposal may result in additional felony offenders on community supervision, the proposal may have an impact on local and state community corrections resources. However, the full cost of the impact on adult community corrections cannot be estimated.

Virginia's sentencing guidelines. Simple possession of a Schedule I or II drug (§ 18.2-250(A)) and sales and distribution-related offenses defined in § 18.2-248(C) are currently covered by the sentencing guidelines as the primary (most serious) offense. Therefore, many of the crimes involving the newly defined synthetic drugs added to Schedule I would be covered by the sentencing guidelines. However, felony convictions under § 18.2-248.1:1 for offenses involving synthetic cannabinoids are not covered by the sentencing guidelines as the primary (most serious) offense. A conviction under one of these provisions (as an additional offense) 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 impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact 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; therefore, Chapter 890 of the 2011 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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