



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 594 (Patron – Obenshain)

LD#: 14103613

Date: 1/9/2014

Topic: Synthetic cannabinoids

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$66,663 (2 beds)
- **Local Adult Correctional Facilities:**
At least \$1,649 (less than 1 bed)
- **Adult Community Corrections Programs:**
Cannot be determined

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

Summary of Proposed Legislation:

The proposal amends § 54.1-3446 of the *Code of Virginia* to add numerous chemical compounds, commonly referred to as synthetic cannabinoids or synthetic marijuana, to the list of Schedule I controlled substances. The proposal also removes nearly all references to synthetic cannabinoids from other sections of the *Code* and repeals § 18.2-248.1:1. 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.

Currently, most of the criminal penalties associated with synthetic cannabinoids parallel the penalties established for offenses involving actual marijuana. Under the proposal, criminal penalties for synthetic cannabinoids would be the same as those for drugs currently listed in Schedule I or II, with the exception of certain possession offenses. In particular, the proposed amendments to § 18.2-250 specify that any person who is not an inmate who possesses a cannabimimetic agent would be guilty of a Class 1 misdemeanor.

Under current law, all offenses involving Schedule I or II drugs are felonies. Pursuant to § 18.2-250, 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. The maximum sentence for a second conviction of selling, distributing, etc., is life imprisonment, with a mandatory minimum sentence of three years; for a third conviction, the mandatory minimum sentence is ten 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.

The proposal also modifies § 2.2-4006 to allow the Board of Pharmacy to amend regulations to add substances to Schedule I or II of the Drug Control Act and to designate this authority as exempt from the

Administrative Process Act (§ 2.2-4000 et seq.). In addition, the proposal expands § 54.1-3401 to include a definition of “controlled substance analog.” To be a controlled substance analog, a substance must have a chemical structure similar to that of a Schedule I or II controlled substance and meet the criteria specified in the proposal. The proposal amends § 54.1-3443 to establish a new process for the Board of Pharmacy to add substances to the list of Schedule I or II controlled substances. The Board would be required to notify the General Assembly’s House and Senate Courts of Justice Committees of any new substance added to the list of Schedule I or II controlled substances.

Analysis:

According to fiscal year (FY) 2012 and FY2013 data from the General District Court Case Management System (CMS), 151 offenders were convicted of a first offense for possession of synthetic cannabinoids as their primary (most serious) offense at sentencing. The majority (83%) of these offenders did not receive an active term of incarceration to serve after sentencing. The remaining offenders (16%) were sentenced to local-responsible (jail) terms with a median sentence of approximately 24 days.

According to FY2012 and FY2013 Circuit Court CMS data, four offenders were convicted of a Class 6 felony under § 18.2-248.1:1(C) for selling synthetic cannabinoids. This crime was the primary, or most serious, offense in all of the cases. While two of these offenders did not receive an active term of incarceration to serve after sentencing, the other two offenders were sentenced to a state-responsible (prison) term of 15 months. No offenders were convicted of a felony in circuit court for manufacturing synthetic cannabinoids or distributing synthetic cannabinoids to an inmate as an accommodation in violation of § 18.2-248.1:1.

Regarding the Department of Juvenile Justice (DJJ), Court Service Units serve as the point of entry into the juvenile justice system. An “intake” occurs when a juvenile is brought before a court service unit officer for one or more alleged law violations. The DJJ reports averaging roughly 52 petitioned intake cases for each of the last two fiscal years (no statute regarding synthetic cannabinoids existed prior to March 23, 2011) for a violation of § 18.2-248.1:1(B) by a person under the age of 18. The DJJ also reports averaging roughly 4 petitioned intake cases for each of the last two fiscal years for a violation of § 18.2-248.1:1(C) by a person under the age of 18. In terms of subsection D of § 18.2-248.1:1, DJJ reports averaging roughly 1 petitioned intake case for each of the last two fiscal years for a violation of this subsection by a person under the age of 18. According to DJJ, there were no petitioned intake cases for a violation of § 18.2-248.1:1(E) in FY2012 or FY2013. For the same time period, the DJJ reports that no juveniles were committed to the Department by the Juvenile and Domestic Relations District Court (J&DR) for any violation of § 18.2-248.1:1.

Impact of Proposed Legislation:

State adult correctional facilities. By designating synthetic cannabinoids as Schedule I controlled substances, the proposal increases the penalties for numerous offenses involving these substances (except for simple possession). In this way, the proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. The impact is estimated to be at least two beds statewide by FY2020. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$66,663. This is a minimum estimate because data contain insufficient detail to identify synthetic marijuana offenders who would be subject to enhanced penalties due to prior Schedule I or II drug convictions, transporting synthetic marijuana into the Commonwealth, or possessing a firearm while possessing synthetic marijuana. As a result, this estimate does not include all circumstances that would be covered by the proposal.

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

FY15	FY16	FY17	FY18	FY19	FY20
0	1	1	2	2	2

Local adult correctional facilities. The proposal is also expected to increase the future need for local-responsible (jail) beds. The impact on local-responsible (jail) beds is estimated to be less than one bed by FY2020 (state costs: \$1,649; local costs: \$2,428).

Adult community corrections programs. The impact of the proposal on community corrections resources cannot be determined.

Virginia's sentencing guidelines. Sales and distribution-related offenses defined in § 18.2-248(C) are currently 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. The Department of Juvenile Justice (DJJ) reports that, while this proposal could cause an increase in commitments, the impact of the proposal on bed space needs for juvenile correctional centers cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that this proposal's impact on detention center bed space cannot be determined.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$66,663 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.

Assumptions underlying the adult state and local-responsible analyses 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 2013.
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 2013.
3. Cost per prison bed was assumed to be \$30,006 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 FY2012 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.04 per day or \$10,242 per year. The local cost was calculated by using the daily expenditure cost of \$73.83 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 \$41.30 per day or \$15,085 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

Assumptions relating to sentencing

1. The impact of the proposed legislation, which would be effective on July 1, 2014, is phased in to account for case processing time.
2. To gauge the impact on sentencing, it was assumed that the distribution of sentences for the affected cases will be similar to the distribution of sentences under the existing felony provisions for first offense distribution, etc., of a Schedule I or II controlled substance under § 18.2-248(C).
3. 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, 2012. For drug offenses, this rate was 10.3%.

Limitations

1. The Circuit Court Case Management System excludes cases from Alexandria, Fairfax, and Virginia Beach.