



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 2110

(Patron – Carrico)

LD#: 07-8222264

Date: 12/8/2006

Topic: Deferral and dismissal consideration for first-time drug offenders

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
33 beds FY2013 (\$836,224)
- **Local Adult Correctional Facilities:**  
5 beds by FY2013
- **Adult Community Corrections Programs:**  
Cannot be determined

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

#### Summary of Proposed Legislation:

This proposal amends § 18.2-251 to restrict eligibility for the deferral of proceedings and dismissal of charges under the state's "first offender" statute. Under the proposal, persons charged with possessing cocaine, heroin or methamphetamine would no longer be eligible for first-offender status. Currently, there is no restriction based on the type of Schedule I or II drug possessed.

#### Analysis:

According to FY2005 and FY2006 Sentencing Guidelines (SG) information, there were 1,268 persons placed under the "first offender" provisions of § 18.2-251. During that same time period, 138 were convicted for failing to fulfill their first-offender conditions. While nearly half (48%) of the first-offender failures were not given a term of incarceration to serve, nearly 43% were sentenced to serve a local-responsible (jail) term; for those committed to jail, the median sentence was three months. The remaining 9% of first-offender violators ordered to serve a state-responsible (prison) term; the median prison sentence was two years.

According to the Commission's analysis of FY2004 Pre/Post-Sentence Investigation (PSI) data, cocaine, heroin and methamphetamine together account for nearly 87% of the Schedule I or II drug possession cases (72% involve cocaine; 10% involve heroin, and 5% involve methamphetamine).

#### Impact of Proposed Legislation:

**State adult correctional facilities.** Eliminating persons possessing cocaine, heroin or methamphetamine from first-offender consideration as proposed is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. Because defendants placed on first-offender status were deemed to be good candidates for supervision in the community, judges will likely sentence most of the affected offenders, once convicted, to probation without an active term of incarceration. This aspect of the proposal may not have an impact on state-responsible bed space needs. However, a portion of these offenders will subsequently violate the conditions of probation. For violators, not convicted of a new crime (also known as "technical" violators), probation violation

sentencing guidelines will be prepared and provided to the judge at the revocation hearing. The probation violation sentencing guidelines, overall, recommend approximately 73% of violators for an active term of incarceration in prison or jail. This incarceration rate is higher than the historical incarceration rate for persons who violate conditions while on first-offender status (see previous section). Thus, the proposal may result in an additional number of offenders committed to the Department of Corrections. The impact on state-responsible (prison) beds is estimated to be 33 beds by FY2013. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$836,224.

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

FY08	FY09	FY10	FY11	FY12	FY13
6	19	27	30	32	33

The proposal also may impact prison space needs in another way. With most defendants ineligible for first-offender status, the proposal will result in an increase in the number of offenders convicted of felony drug offenses. In the future, these convictions will be scored as prior record and may increase the sentencing guidelines recommendation should the offender ever be convicted of a new felony. As Virginia's judges comply with the guidelines at a high rate, the proposal could result in longer sentences for some offenders in the future. The impact of this aspect of the proposal cannot be quantified.

**Local adult correctional facilities.** The proposal will likely increase the future need for local-responsible (jail) beds, as some offenders who historically received a probation sanction for failing their "first offender" conditions will be sentenced to a jail term as recommended by the probation violation sentencing guidelines. The impact on local-responsible (jail) beds is estimated to be a net increase of five beds statewide by FY2013 (state cost: \$53,182; local cost: \$49,173).

#### **Estimated Six-Year Impact in Local-Responsible (Jail) Beds**

FY08	FY09	FY10	FY11	FY12	FY13
2	5	5	5	5	5

**Adult community corrections resources.** The proposal is not expected to increase the need for adult community corrections resources, since persons on first-offender status and probationers are supervised by the same probation officers and must satisfy supervision requirements in the same manner.

**Virginia's sentencing guidelines.** The sentencing guidelines are calibrated to historical incarceration rates and reflect historical sentencing patterns of Virginia's circuit court judges. The proposal will require a significant change in judicial practices if enacted, and may require the Commission to recalibrate the sentencing guidelines for possession of a Schedule I or II drug.

**Juvenile correctional centers.** According to the Department of Juvenile Justice (DJJ), the proposal is not expected to affect juvenile correctional center (JCC) bed space needs.

**Juvenile detention facilities.** The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to affect the bed space needs of juvenile detention facilities.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$836,224 for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

**Assumptions underlying the analysis include:**

**General Assumptions**

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary's Committee on Inmate Forecasting in 2006.
2. New cases representing state-responsible sentences were based on forecasts developed for the Secretary's Committee on Inmate Forecasting and approved in July 2006.
3. Cost per prison bed was assumed to be \$25,709 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 FY2005 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.37 per day or \$10,362 per year. The local cost was calculated by using the daily expenditure cost of \$59.24 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 \$26.23 per day or \$9,581 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 sentence lengths**

1. The impact of the proposed legislation on criminal provisions, which would be effective on July 1, 2007, is phased in to account for case processing time of new cases.
2. To determine the proportion of offenders that would be affected under the proposal, drug type information was based on a Commission special study on drug offenders. In calendar year 2004, 86.6% of the offenders convicted for possession of a Schedule I or II drug were identified as possessing cocaine, heroin or methamphetamine.
3. The 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, 2005; for the offense of possessing a Schedule I or II drug, the rate was 11.7%. Release dates for local-responsible felony convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by felons sentenced in FY2003 to local jails; this rate was 89.7%.
4. To gauge the impact of treating "first offender" cases as convictions under the proposal, it was assumed that persons currently granted "first offender" status would be given probation without active incarceration under the proposal. However, first-offender failures would be subject to sentencing guidelines as a probation violator with an underlying conviction for possession of a Schedule I or II drug. Sentences given in actual probation violation cases were used to estimate the expected sentences for the portion of offenders who historically fail first-offender conditions.

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