



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2324

(Patron – Gilbert)

LD #: 07-0408306

Date: 1/12/2007

Topic: Sale, distribution, possession with intent to distribute methamphetamine

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$705,140 (27 beds)
- **Local Adult Correctional Facilities:**
-\$12,973 (-1 bed)
- **Adult Community Corrections Programs:**
None (\$0)

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

Summary of Proposed Legislation:

The proposal adds § 18.2-248.03 to create mandatory minimum sentences for offenses involving certain amounts of methamphetamine. The proposal requires that any person who manufactures, sells, gives, distributes, or possesses with intent to manufacture, sell, give, or distribute 28 grams or more of a mixture or substance containing methamphetamine is guilty of a felony punishable by a fine of not more than \$500,000 and imprisonment for not less than 5 nor more than 40 years, 3 years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence. If the quantity of the substance involved is 227 grams or more, the offense is a felony punishable by a fine of not more than \$1,000,000 and imprisonment for 5 years to life, and the mandatory minimum term of imprisonment is increased to 5 years.

Methamphetamine is listed as a Schedule II narcotic under the Controlled Substances Act, Title II, of the Comprehensive Drug Abuse Prevention and Control Act of 1970. Currently, under § 18.2-248(C), the manufacture, sale, distribution, or possession with intent to manufacture, sell, or distribute a Schedule I or II drug is a felony punishable by imprisonment of 5 to 40 years. A second or subsequent conviction is punishable by imprisonment of five years to life. Under § 18.2-248(C1), a person who manufactures up to 200 grams of any substance containing methamphetamine is subject to imprisonment of 10 to 40 years for the first offense and 10 years to life for a second or subsequent offense.

The *Code* defines several mandatory minimum penalties for offenses involving Schedule I or II drugs, including methamphetamine. A third or subsequent conviction under § 18.2-248(C) for selling, etc., a Schedule I or II drug is now subject to a five-year mandatory-minimum sentence; however, a third conviction for manufacturing methamphetamine is subject to a mandatory minimum term of three years under § 18.2-248(C1). An offender who transports an ounce or more of a Schedule I or II drug into the Commonwealth must serve a 3-year mandatory minimum sentence for the first conviction and a 10-year mandatory minimum term for a second conviction (§ 18.2-248.01).

Other mandatory penalties apply to offenses involving larger quantities of drug. Under § 18.2-248(C), selling, manufacturing, distributing or possessing with intent to distribute 10 grams or more of

methamphetamine or 20 grams or more of a methamphetamine mixture is subject to imprisonment of 5 years to life and a 5-year mandatory minimum term. This mandatory term does not apply if the offender meets all five of the following conditions: (1) the offender has no violent prior record; (2) the current offense did not involve violence or a firearm; (3) the current offense did not result in a serious injury or death; (4) the offender was not a leader in the current offense, nor a part of a continuing criminal enterprise; and (5) the offender cooperates to the fullest extent.

Under § 18.2-248(H), selling, manufacturing, distributing or possessing with intent to distribute 100 grams or more of methamphetamine or 200 grams or more of a mixture containing methamphetamine is a felony carrying a term of 20 years to life. The 20-year mandatory, minimum sentence can be suspended only if the offender meets all five of the following conditions: (1) the offender has no violent prior record; (2) the current offense did not involve violence or a firearm; (3) the current offense did not result in a serious injury or death; (4) the offender was not a leader in the current offense, nor a part of a continuing criminal enterprise; and (5) the offender cooperates to the fullest extent.

Under § 18.2-248(H1), selling, manufacturing, distributing or possessing with intent to distribute 100 grams to less than 250 grams of methamphetamine or 200 grams to less than one kilogram of a methamphetamine mixture as part of a continuing criminal enterprise is a felony carrying a penalty of 20 years to life. The 20-year mandatory minimum sentence cannot be suspended for any reason.

Under § 18.2-248(H2), selling, manufacturing, distributing or possessing with intent to distribute 250 or more grams of methamphetamine or 1 kilogram or more of a methamphetamine mixture as part of a continuing criminal enterprise is a felony carrying a penalty of life. The life sentence is mandatory, but can be reduced to 40 years only under the condition of substantial cooperation with law enforcement.

Under § 18.2-248 (H, H1 and H2), the quantity thresholds that trigger mandatory minimums for methamphetamine offenses (described above) are substantially different than those specified for cocaine (see Figure 1).

Analysis:

In 2001 and 2004, the Commission conducted comprehensive studies of methamphetamine crime in Virginia. Chapter 5 of the Commission's *2004 Annual Report*, "Methamphetamine Crime in Virginia," provides recent data on the use of the drug, lab seizures, arrests and convictions in the state. It indicates that, although methamphetamine is more prevalent in Virginia today than in earlier years (particularly in certain regions of the state), it remains much less pervasive statewide than other Schedule I or II drugs. According to calendar year (CY) 2003 Pre/Post-Sentence Investigation (PSI) data, more than 80% of state Schedule I or II drug conviction cases were related to cocaine and approximately 11% involved heroin; less than 5% involved methamphetamine.

The Virginia State Police report 82 methamphetamine lab seizures in the Commonwealth during 2004. Most (67%) of the offenders arrested in connection with the labs were prosecuted in state courts, while 13% were taken into the federal system (the remaining 20% were reported as pending). The Virginia State Police report lab seizures dropped to 24 in FY2006.

According to fiscal year (FY) 2002 and 2003 PSI data, there were 138 convictions under § 18.2-248(C) for selling, manufacturing, distributing or possessing with intent to distribute methamphetamine. Data indicate that approximately 14% of these cases involve 28 grams or more of the drug, the minimum quantity necessary to qualify for proposed mandatory minimum sentences. Quantity data, however, was not available for approximately 45% of the Schedule I and II drug cases identified by the Commission during its study.

Complete conviction and sentencing data are not yet available for cases sentenced under the 2005 and 2006 revisions adopted by the General Assembly.

Impact of Proposed Legislation:

State adult correctional facilities. By establishing mandatory minimum sentences for offenses involving certain amounts of methamphetamine, the proposed legislation could increase the future state-responsible (prison) bed space needs of the Commonwealth. As cases involving large quantities of drugs are often processed through the federal court system and are not reflected in Virginia statistics, it is unclear if the proposal will impact the number of offenders prosecuted in Virginia's circuit courts in the future.

The proposal specifies a 3-year mandatory term for cases involving 28 grams up but less than 227 grams of methamphetamine. This is inconsistent with legislation adopted by the 2006 General Assembly, which established a 5-year mandatory term for cases involving 10 grams or more of methamphetamine or 20 grams or more of a methamphetamine mixture. This newly-enacted mandatory minimum penalty must be imposed unless the offender meets certain conditions.

Based on cases historically processed through state courts, the impact of the proposal on prison beds is estimated to be 27 beds by FY2013. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$705,140. This estimate does not account for changes to § 18.2-248 made by the 2006 General Assembly, which became effective July 1, 2006.

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

FY08	FY09	FY10	FY11	FY12	FY13
2	8	16	22	26	27

Local adult correctional facilities. The proposal will result in a reduced need for local-responsible (jail) bed space, as some offenders who historically received a jail sentence would be required to serve a prison term under the proposal. The impact on local-responsible (jail) beds is estimated to be a net reduction of approximately one bed statewide by FY2013 (state savings: \$12,973; local savings: \$11,996).

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

FY08	FY09	FY10	FY11	FY12	FY13
-1	-1	-1	-1	-1	-1

Adult community corrections programs. Because the proposal does not create new crimes or mandate longer periods of community supervision, it is unlikely that the proposal will have an impact on community corrections resources. For offenders who are required to serve longer prison terms as a result of the proposal, the need for community corrections services will be delayed until the additional prison time is served.

Virginia's sentencing guidelines. Currently, offenses under § 18.2-248(C) are covered by the sentencing guidelines as the primary (or most serious) offense in a sentencing event. Offenses under the proposed § 18.2-248.03 would not be covered as the primary (or most) serious offense in a case; however, convictions under this statute may augment the guidelines recommendation if a covered offense is the most serious at sentencing. 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 centers cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal's impact on juvenile detention facilities cannot be determined.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$705,140 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 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 the admissions forecast as approved by the Secretary's Committee on Inmate Forecasting 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, which would be effective on July 1, 2007, is treated as applying to all offenders subject to truth-in-sentencing (no-parole) provisions from that date onward.
2. 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, 2005. For Schedule I or II drug sales, this rate was 11.69%.
3. The local-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 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 proposal, it was assumed that all offenders convicted under § 18.2-248(C) for offenses involving at least 28 grams but less than 227 grams of methamphetamine who received a sentence less than the proposed three-year mandatory minimum term in the past will receive an effective sentence of exactly three years should the proposal be enacted. Similarly, it was assumed that all offenders convicted under § 18.2-248(C) for offenses involving 227 grams or more of methamphetamine who received less than the five-year mandatory minimum term proposed will receive an effective sentence of exactly five years under the proposal.
5. Data on drug quantity was available for approximately 55% of the Schedule I and II drug cases identified by the Commission during its 2004 study on methamphetamine crime. For the remaining 45% of cases, it was assumed that the distribution of drug quantities would be similar to cases for which quantity was known.

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Figure 1
Summary of Virginia's Drug Kingpin and Drug Quantity Enhancement Statutes –

