



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 1156

(Patron – Phillips)

LD#: 08-0602680

Date: 12/21/2007

Topic: Sale, distribution, possession with intent to distribute Schedule I/II drug

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$51,492,348 (1,876 beds)
- **Local Adult Correctional Facilities:**  
-\$6,772,296 (-652 beds)
- **Adult Community Corrections Programs:**  
None (\$0)

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

#### Summary of Proposed Legislation:

The proposal amends § 18.2-248 to establish mandatory minimum penalties for offenders convicted of manufacturing, selling, distributing, or possessing with intent to distribute a Schedule I or II drug. The specified mandatory minimum penalties must be served consecutively with any other sentence. The proposal also increases statutory penalty ranges in certain circumstances. The proposal is summarized in the table below.

Offense	Current statutory penalty	Proposed statutory penalty	Proposed mandatory minimum
1 <sup>st</sup> conviction for selling, etc., a Schedule I/II drug	5 to 40 years	Same as current	1 year
1 <sup>st</sup> conviction for selling, etc., a Schedule I/II drug – death or bodily injury of another unintentionally occurs as a result of using a drug from the offense	5 to 40 years	10 years to life	3 years
2 <sup>nd</sup> conviction for selling, etc., a Schedule I/II drug	5 years to life	Same as current	3 years
2 <sup>nd</sup> conviction for selling, etc., a Schedule I/II drug – death or bodily injury of another unintentionally occurs as a result of using a drug from the offense	5 years to life	20 years to life	5 years
3 <sup>rd</sup> conviction for selling, etc., a Schedule I/II drug	5 years to life	10 years to life	5 years (current mandatory minimum)
3 <sup>rd</sup> conviction for selling, etc., a Schedule I/II drug – death or bodily injury of another unintentionally occurs as a result of using a drug from the offense	5 years to life	30 years to life	10 years
Distributing Schedule I/II drug as an accommodation – death or bodily injury of another unintentionally occurs as a result of using a drug from the offense	1 to 10 years	5 years to life	2 years

Note: The proposal does affect § 18.2-248(C1), relating to the manufacture of methamphetamine. Section 18.2-248 currently does not contain any penalty enhancements based on victim injury.

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**Analysis:**

According to fiscal year (FY) 2006 and FY2007 Sentencing Guidelines (SG) data, there were 5,117 cases with convictions for manufacturing, selling, distributing, or possessing with intent to distribute a Schedule I or II drug under § 18.2-248(C). For these offenders, this crime was the most serious charge at conviction. Nearly two-thirds (60%) of the offenders were given a state-responsible (prison) term, for which the median sentence was two years. One-fourth (25%) of the offenders were given a local-responsible (jail) term with a median sentence of eight months. Only 15% were sentenced to probation with no active incarceration term to serve.

In addition, FY2006 and 2007 Sentencing Guidelines data show 440 cases with a second or subsequent conviction for selling, etc., a Schedule I/II drug as the most serious offense. The overwhelming majority of these offenders (86%) received a state-responsible (prison) term and the median sentence in these cases was four years.

FY2006 and FY2007 Sentencing Guidelines data also contain 89 cases with a third or subsequent conviction for selling, etc., a Schedule I/II drug. All of the 89 cases were sentenced to prison and the median sentence reflects the existing five-year mandatory minimum penalty.

Pre/Post-Sentence Investigation (PSI) data for the same time period show no cases of Schedule I/II drug sales involving death or serious injury.

Sentencing Guidelines data for FY2006 and FY2007 reveal 340 cases involving distribution of a Schedule I/II drug for accommodation. The largest share of these offenders (42%) received no active incarceration term to serve, but 40% were given a local-responsible (jail) term with a median sentence of four months. Approximately one in five offenders convicted of this crime was committed to prison (median sentence of 1.6 years). According PSI data for this period, one accommodation case involved a death and another involved serious physical injury; the offenders in these cases would qualify for the proposed penalty enhancements associated with victim injury.

Since July 2002, Virginia's sentencing guidelines have included a risk assessment component applicable to drug offenders. Pursuant to a legislative directive and after years of empirical study and pilot testing, the Sentencing Commission incorporated a risk assessment instrument into the guidelines. The instrument is designed to identify the lowest-risk nonviolent offenders who would otherwise be directed towards incarceration. The risk worksheet is completed for drug, fraud and larceny offenders who are recommended by the sentencing guidelines for an active term of incarceration and who satisfy the eligibility criteria established by the Commission. Offenders scoring 38 points or less on the scale are recommended for sanctions other than traditional incarceration. Judges are considered in compliance with the guidelines if they sentence within the recommended incarceration range or if they follow the recommendation for alternative punishment. However, offenders with any current or prior convictions for violent felonies (defined in § 17.1-803) and offenders who sell 28.35 grams (1 ounce) or more of cocaine are excluded from risk assessment consideration.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposed mandatory minimums will increase state- responsible (prison) bed space needs by increasing the number of offenders committed to prison and increasing the length-of-stay for many offenders. Moreover, judges will no longer be able to utilize the risk assessment instrument that is integrated into the guidelines to consider alternative punishment options for low-risk drug offenders. The impact is estimated to be 1,876 beds by 2014.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$51,492,348.

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

FY09	FY10	FY11	FY12	FY13	FY14
475	1281	1600	1766	1858	1876

**Local adult correctional facilities.** The proposal will decrease the demand for local-responsible (jail) beds, because offenders currently receiving jail sentences would instead receive a prison terms under the proposed mandatory minimums. The impact is estimated to be a decrease of 652 beds by FY2014 (state savings: \$6,772,296; local savings: \$6,793,172).

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

FY09	FY10	FY11	FY12	FY13	FY14
-301	-633	-666	-673	-679	-652

**Adult community corrections resources.** The proposal is not expected to increase the need for state community corrections resources. The proposal will delay the need for services for felony offenders affected by the proposal, as they will be serving longer incarceration terms than those currently served by offenders convicted of this crime.

**Virginia's sentencing guidelines.** Convictions under § 18.2-248(C and D) are covered by the sentencing guidelines. No adjustment to the guidelines would be necessary under the proposal.

**Juvenile correctional centers.** According to the Department of Juvenile Justice, mandatory minimums do not affect the duration of commitments to juvenile correctional centers (JCC); therefore, the proposal is not expected to increase juvenile correctional center bed space needs.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal is not expected to increase 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 \$51,492,348 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 of Public Safety's Committee on Inmate Forecasting in 2007.
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 July 2007.
3. Cost per prison bed was assumed to be \$27,452 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 FY2006 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.42 per day or \$10,381 per year. The local cost was calculated by using the daily expenditure cost of \$61.48 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 \$28.51 per day or \$10,413 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.* Note: The Compensation Board does not include data from jails that were not in operation for the entire fiscal year. Middle River Regional Jail was excluded because it opened during FY2006, while Augusta and Tazewell Counties were excluded because their

jails were closed during the same time period; Augusta County now participates in the new Middle River Regional Jail and Tazewell County now participates in the Southwest Virginia Regional Jail.

**Assumptions relating to sentence lengths**

1. The impact of the proposed legislation, which would be effective on July 1, 2008, is phased in to account for case processing time.
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, 2006. For Schedule I or II drug sale crimes, this rate was 11.0%.
3. It was assumed that all offenders convicted under § 18.2-248(C) who received a sentence less than the proposed mandatory minimum term in the past will receive an effective sentence exactly equal to the mandatory minimum if the proposal is enacted. If an offender was convicted of multiple counts or multiple offenses affected by the proposal, the mandatory minimum terms were assumed to be served consecutively.

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