



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 21 (Patron – O'Bannon)

LD#: 08-3106664

Date: 12/5/2007

Topic: Schedule I controlled substances

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined
- **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

Summary of Proposed Legislation:

The proposal amends § 54.1-3446 of the *Code of Virginia* to add *salvia divinorum* and *salvinorin A* to the list of Schedule I controlled substances.

Analysis:

According to the Drug Enforcement Agency (DEA), there has been a recent emergence in the use of ethnobotanical plants, such as *Salvia divinorum*, by young adults and adolescents in the U.S. (www.usdoj.gov/dea/pubs/states/newsrel/newark_intel_bulletin_salvia.html). These substances can induce changes in perception or hallucinations. Since *Salvia divinorum* and its active ingredients are not specifically listed in the Controlled Substances Act, some on-line botanical companies and drug promotional sites have advertised *Salvia* as a legal alternative to other plant hallucinogens like mescaline. The plant material is smoked for the induction of "mystical" or hallucinogenic experiences. *Salvinorin A* is the active component of *Salvia divinorum*.

According to fiscal year (FY) 2006 and FY2007 Sentencing Guideline (SG) data, there were 17,655 sentencing events involving Schedule I or II drug crimes. In these cases, the Schedule I/II drug crime was the primary (or most serious) offense. Approximately two-thirds of these convictions involved simple possession (§ 18.2-250(A,a)), while the remaining one-third were related to the sale or distribution of such a drug (§ 18.2-248(C)). Nearly half of offenders convicted of simple possession were sentenced to a term of incarceration: 38% were given a local-responsible (jail) term and another 11% received a state-responsible (prison) term. For possession offenders committed to prison, the median sentence was 1.6 years. Offenders convicted of sales-related crimes were much more likely to be incarcerated. While 26% were sentenced to serve time in jail, 56% received a prison term. For offenders committed to prison for a sales-related offense, the median sentence was two years.

Impact of Proposed Legislation:

State adult correctional facilities. Because it expands the applicability of existing felony provisions, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The number of cases that may result from adding *Salvia Divinorum* and Salvinorin A to the list of Schedule I drugs cannot be estimated. The magnitude of the impact, therefore, cannot be quantified.

Local adult correctional facilities. The proposal may increase local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined with existing data.

Adult community corrections resources. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected by the proposal cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. Convictions under §§ 18.2-248(C) and 18.2-250(A,a) 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 (DJJ), the impact of the proposal on juvenile correctional center (JCC) bed space cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the impact of the proposal 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 and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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