



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 562

#### Engrossed

(Patron Prior to Engrossment – Obenshain)

LD#: 08-6253288

Date: 2/1/2008

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

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$260,310 (9 beds)
- **Local Adult Correctional Facilities:**  
-\$9,400 (-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 the *Code of Virginia* to establish mandatory minimum sentences for offenses involving certain amounts of methamphetamine. Under the proposal, any person convicted of manufacturing, selling, distributing, or possessing with intent to distribute 28 grams or more of a mixture or substance containing methamphetamine, its salts, isomers, or salts of isomers, would be subject to a mandatory minimum term of three years imprisonment. An offense involving 227 grams or more of a mixture or substance containing methamphetamine, its salts, isomers, or salts of isomers, would be subject to a mandatory minimum term of five years imprisonment. The specified mandatory minimum penalties must be served consecutively with any other sentence. This version of the bill contains an enactment clause stating that it shall not become effective unless funds for this purpose are included in the appropriation act.

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. The General Assembly has established several mandatory minimum penalties for offenses involving Schedule I or II drugs, including methamphetamine. In 2000, the General Assembly added methamphetamine to Virginia's drug kingpin provisions. Current penalties defined in the *Code of Virginia* for crimes involving methamphetamine are summarized in the table below.

#### Penalties in the *Code of Virginia* Related to Methamphetamine

Offense	Statutory Penalty	Amount of Methamphetamine	Mandatory Penalty
Sell, give, distribute or possess with intent to distribute a Schedule I or II drug – 1 <sup>st</sup> conviction (§ 18.2-248(C))	5 to 40 years	None specified	None
Sell, give, distribute or possess with intent to distribute a Schedule I or II drug – 2 <sup>nd</sup> conviction (§ 18.2-248(C))	5 years to life	None specified	None
Sell, give, distribute or possess with intent to distribute a Schedule I or II drug – 3 <sup>rd</sup> or subsequent conviction (§ 18.2-248(C))	5 years to life	None specified	5 years

Offense	Statutory Penalty	Amount of Methamphetamine	Mandatory Penalty
Manufacture, sell, give, distribute or possess with intent to distribute quantities of a Schedule I or II drug defined in § 18.2-248(C)	5 years to life	10 grams or more of pure meth; 20 grams or more of a mixture containing meth	5 years*
Manufacture methamphetamine – 1 <sup>st</sup> conviction (§ 18.2-248(C1))	10 to 40 years	Any amount of pure meth; Less than 200 grams of a mixture containing meth	None
Manufacture methamphetamine – 2 <sup>nd</sup> conviction (§ 18.2-248(C1))	10 years to life	Any amount of pure meth; Less than 200 grams of a mixture containing meth	None
Manufacture methamphetamine – 3 <sup>rd</sup> conviction (§ 18.2-248(C1))	10 years to life	Any amount of pure meth; Less than 200 grams of a mixture containing meth	3 years
Manufacture, sell, distribute or possess with intent to distribute quantities of a Schedule I or II drug defined in § 18.2-248(H)	20 years to life	100 grams or more of pure meth; 200 grams or more of a mixture containing meth	20 years*
Manufacture, sell, distribute or possess with intent to distribute quantities of a Schedule I or II drug defined in § 18.2-248(H1) during any 12-month period as organizer, administrator or leader of a continuing criminal enterprise	20 years to life	100-249 grams of pure meth; 200-999 grams of a mixture containing meth	20 years
Manufacture, sell, distribute or possess with intent to distribute quantities of a Schedule I or II drug defined in § 18.2-248(H2) during any 12-month period as organizer, administrator or leader of a continuing criminal enterprise	Life	250 grams or more of pure meth; 1,000 grams or more of a mixture containing meth	Life or 40 years**
Gross \$100,000 but less than \$250,000 during any 12 month period as administrator, organizer or leader of a continuing criminal enterprise (§ 18.2-248(H1)(i))	20 years to life	None specified	20 years
Gross \$250,000 or more within any 12 month period as administrator, organizer or leader of a continuing criminal enterprise (§ 18.2-248(H2)(ii))	Life	None specified	Life or 40 years**
Transport 1 ounce or more of a Schedule I or II drug into the Commonwealth with intent to sell or distribute – 1 <sup>st</sup> conviction (§ 18.2-248.01)	5 to 40 years	1 ounce or more	3 years
Transport 1 ounce or more of a Schedule I or II drug into the Commonwealth with intent to sell or distribute – 2 <sup>nd</sup> conviction (§ 18.2-248.01)	5 to 40 years	1 ounce or more	10 years
Sell a Schedule I or II drug to a minor at least 3 years younger than offender (§ 18.2-255(A))	10 to 50 years	None specified	5 years
Cause minor to assist in the sale of a Schedule I or II drug (§ 18.2-255(A))	10 to 50 years	None specified	5 years
Manufacture, sell, distribute or possess with intent to sell any drug on or near certain properties (§ 18.2-255.2)	1 to 5 years	None specified	1 year
Possess a Schedule I or II drug while possessing firearm on or about the person (§ 18.2-308.4(B))	1 to 5 years	None specified	2 years
Manufacture, sell, distribute, possess with intent to distribute a Schedule I or II drug while in possession of a firearm (§ 18.2-308.4(C))	5 years	None specified	5 years

\*The mandatory minimum sentence may be suspended if the following conditions are met: the offender has never been convicted of a violent felony, the offender did not use or threaten violence or possess a weapon in connection with the offense, the offender was not an organizer or administrator of a continuing criminal enterprise, the offense did not result in death or serious bodily injury, and the offender cooperates with authorities.

\*\* Judges may reduce the penalty of life to a sentence of 40 years if the offender cooperates with law enforcement authorities.

## Analysis:

In 2001, 2004 and 2007, the Commission conducted comprehensive studies of methamphetamine crimes in Virginia. Chapter 3 of the Commission's 2007 *Annual Report*, "Methamphetamine Crime in

Virginia,” provides recent data on use of the drug, lab seizures, arrests and convictions in the state. Analysis indicates that although methamphetamine is more prevalent in Virginia today than in the early 1990s, particularly in certain regions of the state, it remains much less pervasive statewide than other Schedule I or II drugs. According to fiscal year (FY) 2005 Pre/Post-Sentence Investigation (PSI) data, the most commonly reported drugs (excluding marijuana) were cocaine, heroin, methamphetamine and ecstasy. Of cases involving these four drugs, 85% were related to cocaine. Slightly more than 5% of cases were associated with methamphetamine.

The El Paso Intelligence Center (EPIC), a division of the U.S. Drug Enforcement Administration (DEA), reported that federal and local agencies seized 48 methamphetamine laboratories in the Commonwealth in 2005. The number of laboratory seizures in Virginia decreased to 18 in 2006.

According to PSI data, the total number of convictions in Virginia’s circuit court for methamphetamine offenses (including sales-related offenses as well as simple possession) peaked in FY2004 at 204. Recent data suggest a downward turn in the number of methamphetamine convictions. PSI data reveal 157 convictions in FY2005 and 73 in FY2006. Although FY2005 and FY2006 PSI data are not yet complete, it is unlikely that FY2006 cases will exceed the number of cases recorded in FY2004.

Based on FY2005 and FY2006 PSI data, there were 104 convictions under § 18.2-248(C and C1) for selling, manufacturing, distributing or possessing with intent to distribute methamphetamine. Data indicate that 12.5% of these cases involved 28 grams or more of the drug, the minimum quantity necessary to qualify for proposed mandatory minimum sentences. None of the cases during this time period involved 227 grams or more of methamphetamine. Quantity data was not available for approximately 14.4% of the methamphetamine sales-related cases in FY2005 and FY2006.

The 2006 General Assembly enacted a 5-year mandatory minimum penalty for cases involving 10 grams or more of methamphetamine or 20 grams or more of a methamphetamine mixture, which must be imposed unless the offender meets certain conditions. Preliminary PSI data for FY2007 do not reveal any convictions under this specific provision. However, 10 offenders would have qualified for this mandatory term based on the quantity of methamphetamine seized in the case. Two of the 10 offenders received an effective sentence (imposed sentence less any suspended time) of 5 years, a term equal to the existing mandatory minimum penalty.

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### Impact of Proposed Legislation:

**State adult correctional facilities.** By establishing mandatory minimum sentences for offenses involving certain amounts of methamphetamine, the proposed legislation may increase the future state-responsible (prison) bed space needs of the Commonwealth.

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 (applicable unless the offender meets specified conditions). Therefore, the proposal specifies a lower mandatory minimum penalty for these cases than what is available under existing law. Preliminary FY2007 PSI data suggest that prosecutors have not begun utilizing the current five-year mandatory minimum.

Assuming that prosecutors will charge all eligible offenders under the proposed three-year mandatory minimum penalty, the impact of the proposal on prison beds is estimated to be nine beds by FY2014. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$260,310.

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

FY09	FY10	FY11	FY12	FY13	FY14
1	3	7	9	9	9

**Local adult correctional facilities.** Although some offenders who historically received a jail sentence would be required to serve a prison term under the proposal, the overall impact on local-responsible (jail) bed space needs will be minimal. The impact is estimated to be a net reduction of approximately one bed statewide by FY2014 (state savings: \$9,400; local savings: \$9,429).

**Adult community corrections resources.** 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 a new felony, offenses prosecuted 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 provision 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 center (JCC) bed space needs cannot be determined.

**Juvenile detention facilities.** According to the Department of Juvenile Justice (DJJ), the impact of the proposal on the bed space needs of juvenile detention facilities cannot be determined.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$260,310 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 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 sales, this rate was 11.00%.

3. 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.

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**Summary of Virginia's Drug Kingpin Statutes and Quantity Thresholds**

