



## Fiscal Impact Statement for Proposed Legislation

### *Virginia Criminal Sentencing Commission*

#### House Bill No. 1009

(Patron – Athey)

LD #: 10102491

Date: 1/4/2010

Topic: Right of appeal for first offender drug possession

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$50,000 \*
- **Local Adult Correctional Facilities:**  
Cannot be determined
- **Adult Community Corrections Programs:**  
None (\$0)

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

\* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 781 of the 2009 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

#### Summary of Proposed Legislation:

The proposed legislation amends § 18.2-251, known as the “First Offender” statute.

Currently, for a person charged with possessing a Schedule I or II or marijuana who does not have any prior drug convictions, the court may defer proceedings without entering a judgment of guilt and place the person on probation with certain terms and conditions. Upon fulfillment of those terms and conditions, the court dismisses the original charge. Should the person violate a term or condition, the judge may enter an adjudication of guilt and sentence the offender as he or she otherwise would.

The proposal specifies that any person who, after pleading guilty, is placed on probation under the First Offender statute, violates a term or condition of his probation, and is thereafter adjudicated guilty shall have no right of appeal and trial de novo on the original drug possession charge.

#### Analysis:

According to Sentencing Guidelines data for fiscal years 2007 and 2008, there were 2,219 defendants placed on probation under the First Offender statute (§ 18.2-251).

During the same time period, an additional 271 offenders could be identified as having violated the terms and conditions of their First Offender probation. Upon being found guilty of possessing a Schedule I/II drug, half (49%) of these offenders were sentenced to probation without an active term of incarceration. Another 45% received a local-responsible (jail) term with a median sentence of nearly three months. For the 6% of offenders who were given a state-responsible (prison) term, the median sentence was 1.3 years.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By eliminating the right of appeal and trial de novo in certain circumstances, the proposed amendments to § 18.2-251 could result in additional felony convictions and offenders committed to prison. In this way, the proposal could increase future state-responsible (prison) bed space needs. The number of additional felony convictions and prison commitments that may result from the proposal cannot be estimated. Therefore, the impact of the proposal 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.

**Adult community corrections programs.** The proposal is not expected to impact adult community corrections programs, as defendants affected by the proposal would already be under community supervision per the First Offender statute.

**Virginia's sentencing guidelines.** The sentencing guidelines cover convictions for possession of a Schedule I/II drug as well as violations of the First Offender statute. No adjustment to the guidelines would be necessary under the proposal.

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

**Juvenile detention facilities.** According to the Department of Juvenile Justice (DJJ), 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 cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 781 of the 2009 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.**

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

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