Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1778

(Patron – Gilbert)

LD#: 11102120 **Date:** 12/10/2010

Topic: Penalties for offenses involving synthetic marijuana

Fiscal Impact Summary:

- **State Adult Correctional Facilities:** $50,000 *
- **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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 874 of the 2010 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of $50,000.

Summary of Proposed Legislation:

The proposal amends § 54.1-3446 to include synthetic marijuana as a Schedule I drug in the Drug Control Act and adds § 18.2-248.1:1 to create specific penalties for possessing, selling, giving, distributing, or possessing with intent to distribute, synthetic marijuana. Synthetic marijuana, also known as K2, spice or Mr. Smiley, is dried herbs sprayed with a chemical compound that, when smoked, creates a high similar to marijuana. The second enactment clause declares that an emergency exists and will make the proposal effective upon passage.

Under the proposal, the penalties for offenses associated with synthetic marijuana are as follows:

Offense	**Penalty**
Possess synthetic marijuana	Class 1 misdemeanor (up to 12 months)
Sell, give, distribute, or possess with intent to distribute up to ½ ounce of synthetic marijuana	Class 1 misdemeanor (up to 12 months)
Sell, give, distribute, or possess with intent to distribute more than ½ ounce up to 5 pounds of synthetic marijuana	Class 5 felony (1 to 10 years)
Sell, give, distribute, or possess with intent to distribute more than 5 pounds of synthetic marijuana	Felony punishable by 5 to 30 years
Manufacture synthetic marijuana, not for personal use	Felony punishable by 5 to 30 years

With only a few exceptions, the proposed penalties for offenses involving synthetic marijuana mirror the penalties defined in current *Code* for crimes involving actual marijuana. Three exceptions are:

- Possession of actual marijuana is a misdemeanor punishable by up to 30 days for the first conviction; a second or subsequent conviction for possession of marijuana is a Class 1 misdemeanor. Under the proposal, possession of synthetic marijuana is a Class 1 misdemeanor upon the first conviction;
- A third or subsequent conviction for selling, giving, distributing, manufacturing, etc., actual marijuana carries a five-year mandatory minimum sentence. The proposal does not include a mandatory minimum penalty for synthetic marijuana;
- The proposal does not define an offense for distribution of synthetic marijuana as an accommodation, as is currently defined for acts involving actual marijuana.

Analysis:

At this time, the following states have made it illegal to possess or sell synthetic marijuana: Alabama, Arkansas, Georgia, Hawaii, Iowa, Illinois, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Dakota and Tennessee (Source: Rodney Thrash, *St. Petersburg Times*, October 11, 2010).

The number of incidents in Virginia involving synthetic marijuana is not known.

Sentencing information for cases involving actual marijuana is available. According to fiscal year (FY) 2009 and FY2010 Sentencing Guidelines (SG) data, there were 1,690 felony sentencing events involving marijuana drug crimes. In these cases, the marijuana drug crime was the primary (or most serious) offense. Nearly 86% of these cases involved a conviction for selling, distributing, possessing with intent to distribute, etc., more than ½ ounce up but not over five pounds of marijuana. Two-thirds (66%) of the offenders convicted of this crime were sentenced to a term of incarceration: 51% were given a local-responsible (jail) term and 16% received a state-responsible (prison) term. For the offenders committed to prison, the median sentence was 1.8 years.

Information for misdemeanor marijuana cases is also available. According to the Local Inmate Data System (LIDS), which captures information on offenders held pre- or post-trial in jail, there were 12,753 convictions during FY2009 and FY2010 involving misdemeanor marijuana offenses. Approximately 60% of these cases involved a first-time possession of marijuana (punishable by up to 30 days in jail), while another 21% involved a subsequent possession offense (a Class 1 misdemeanor). The remaining 19% were convictions for sales-related offenses involving ½ ounce or less of marijuana or distribution of marijuana as an accommodation.

Impact of Proposed Legislation:

State adult correctional facilities. By creating new felony crimes for certain acts involving synthetic marijuana, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The number of additional felony convictions that may result from the proposal cannot be estimated; therefore, the magnitude of the impact cannot be determined.

Local adult correctional facilities. Local-responsible (jail) bed space needs may be increased due to the creation of new felony and misdemeanor crimes associated with synthetic marijuana; however, the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in additional felony and misdemeanor convictions and subsequent supervision requirements, the proposal may affect adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. As new crimes, convictions under § 18.2-248.1:1 would not be covered by the sentencing guidelines as the primary (most serious) offense. Conviction for such an offense, however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the 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 needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact 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; therefore, Chapter 874 of the 2010 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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