



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1987

(Patron – Kilgore)

LD#: 11103594

Date: 1/5/2011

Topic: Possession of certain substances with intent to manufacture methamphetamine

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 proposed legislation amends subsection J of § 18.2-248 to refine the list of substances involved in the manufacture of methamphetamine. Possession of two or more of these substances, coupled with the intent to manufacture methamphetamine, is punishable as a Class 6 felony. The proposal adds ammonium nitrate, lithium hydroxide, and lithium salts to the list of prohibited substances; it also substitutes “iodine” for the phrase “iodine crystals or tincture of iodine” and “phosphorus” for “red phosphorus.” These changes are intended to capture substances used in new methods of manufacture and to expand the list to include by-products of manufacture.

Analysis:

According to the Circuit Court Automated Information System (CAIS) for fiscal year (FY) 2009 and FY2010, 21 offenders were convicted of possession of precursor substances with intent to manufacture methamphetamine under § 18.2-248(J). However, this offense was the primary (most serious) offense at sentencing in only nine cases. Of these, eight offenders (89%) were sentenced to probation and one offender (11%) was sentenced to serve 200 days (6.6 months) in jail.

The remaining 12 of the 21 offenders were convicted of at least one other offense with a higher statutory maximum penalty (i.e., a maximum penalty exceeding the five-year maximum for possessing methamphetamine precursors). The offense carrying the highest statutory maximum penalty is identified as the primary offense in the case. For nine of the 12 offenders, the primary offense was manufacturing, selling or distributing methamphetamine as defined in §§ 18.2-248(C) or 18.2-248(C1). Two offenders were convicted of possession of a Schedule I or II controlled substance under § 18.2-250(A,a) as the primary offense and one offender was convicted of manufacturing marijuana under § 18.2-248.1(c).

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of an existing felony, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The proposal expands the list of prohibited substances associated with the production of methamphetamine (both precursors and by-products). 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. The proposal may also increase local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in additional felony 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. Convictions under subsection J of § 18.2-248 are not covered by the sentencing guidelines as the primary (most serious) offense. Such a conviction, 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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