



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1082

(Patron – Hanger)

LD#: 11100833

Date: 12/14/2010

Topic: Adding synthetic marijuana to list of Schedule I drugs

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. 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.

Currently, possession of a Schedule I or II drug is a Class 5 felony, punishable by imprisonment of 1 to 10 years. Selling, distributing, or manufacturing a Schedule I or II drug, or possessing such a drug with intent to sell, distribute, or manufacture, is punishable by 5 to 40 years with a maximum fine of \$500,000. The maximum sentence for a second or third conviction of selling, distributing, etc., is life imprisonment, with the third offense carrying a mandatory minimum sentence of five years. Distribution of a Schedule I or II drug by accommodation is a Class 5 felony. The *Code* includes additional felonies for transporting a Schedule I or II drug into the Commonwealth, distributing a Schedule I or II drug to a person under the age of 18, distributing near schools or other specified properties, and for possessing a Schedule I or II drug while possessing a firearm.

As a point of reference, the *Code* defines other penalties that are specific to marijuana:

- Possess marijuana (1st conviction): misdemeanor punishable by up to 30 days in jail
- Possess marijuana (2nd or subsequent conviction) : Class 1 misdemeanor
- Sell, distribute, or possess with intent to sell up to ½ ounce of marijuana: Class 1 misdemeanor
- Sell, distribute, or possess with intent to sell ½ ounce up to 5 pounds of marijuana: Class 5 felony
- Sell, distribute, or possess with intent to sell more than 5 pounds of marijuana: Felony punishable by 5 to 30 years
- Sell, distribute, or possess with intent to sell marijuana (3rd or subsequent conviction): 5 years to life with a 5-year mandatory minimum sentence
- Distribute as accommodation: Class 1 misdemeanor
- Manufacture marijuana, not for personal use: Felony punishable by 5 to 30 years

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 Schedule I or II drugs is available. According to fiscal year (FY) 2009 and FY2010 Sentencing Guideline (SG) data, there were 13,213 felony sentencing events involving Schedule I or II drug crimes. In these cases, the Schedule I or II drug crime was the primary (or most serious) offense. Approximately 60% of these convictions involved simple possession. Nearly half of the offenders convicted of simple possession were sentenced to a term of incarceration: 38% were given a local-responsible (jail) term and 11% received a state-responsible (prison) term. For possession offenders committed to prison, the median sentence was 1.6 years. Offenders convicted for selling, distributing, etc., (§ 18.2-248(C)) were much more likely to be incarcerated. While 24% were sentenced to serve time in jail, 63% received a prison term. For offenders committed to prison for a sales or distribution-related offense, the median sentence was 2.2 years.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the list of prohibited Schedule I drugs, the proposal expands the applicability of several existing felonies. In this way, 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. 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. Simple possession of a Schedule I or II drug (§ 18.2-250(A)) and sales and distribution-related offenses defined in § 18.2-248(C) are currently covered by the sentencing guidelines as the primary (most serious) offense. 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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