



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1267

(Patron – Martin)

LD#: 11103870

Date: 1/24/2011

Topic: Contraband and unstamped cigarettes

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000*
- **Local Adult Correctional Facilities:**
Cannot be determined, likely to be small
- **Adult Community Corrections Programs:**
Cannot be determined, likely to be small

- **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 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 § 3.2-4212 to decrease the threshold possession amount of contraband cigarettes that triggers a mandatory minimum jail sentence. Currently, under § 3.2-4212(D), it is unlawful to (i) sell or distribute cigarettes or (ii) acquire, possess, or import cigarettes intended for distribution or sale in the Commonwealth in violation of § 3.2-4207. A violation of this section is a Class 1 misdemeanor; if the violation involves 3,000 or more packages of cigarettes, however, the sentence shall include a mandatory minimum term of confinement of 90 days. The proposal reduces the threshold amount triggering the mandatory minimum from 3,000 packs to 500 packs.

Title 3.2 is a recodification of Title 3.1 that was enacted on October 1, 2008. At that time, the unlawful sale or distribution of contraband cigarettes was made a Class 2 misdemeanor under § 3.2-4212(D). The 2009 General Assembly, however, increased the penalty for this offense to a Class 1 misdemeanor and established the 3,000 pack threshold for the mandatory minimum.

The proposal also amends § 58.1-1017 regarding the unlawful sale or possession of unstamped cigarettes for the purpose of evading the payment of taxes on such products. In general, this offense is a Class 2 misdemeanor; in 2004, however, the General Assembly increased the penalty for this offense to a Class 6 felony for violations involving 3,000 or more packages of cigarettes. The current proposal reduces the felony threshold amount from 3,000 packs to 500 packs.

Analysis:

There were no convictions reported in fiscal year (FY) 2009 or FY2010 in the General District Court Automated Information System (CAIS) for misdemeanor violations of § 3.1-336.10 (the statute that was replaced by § 3.2-4212 in the recodification of Title 3.1) or § 3.2-4212 (the current statute). Nine

offenders were convicted of misdemeanor violations of § 58.1-1017 for the unlawful sale or possession of less than 3,000 packs of unstamped cigarettes; of these, eight offenders (89%) were sentenced to probation without an active term of incarceration to serve, and one offender (11%) was sentenced to a local-responsible (jail) term of just under three months.

According to FY2009 and FY2010 Circuit Court CAIS data, there were no felony convictions under § 58.1-1017 for the unlawful sale or possession of 3,000 or more packs of unstamped cigarettes.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal reduces the threshold amount of unstamped cigarettes connected with felony violations of § 58.1-1017. This could increase the future state-responsible (prison) bed space needs of the Commonwealth. According to available data, however, there have been no felony convictions during a recent two-year period under the existing provision. The number of additional felony convictions that may result from the proposal cannot be estimated; however, the magnitude of the impact is likely to be small.

Local adult correctional facilities. Similarly, the proposal could increase the future local-responsible (jail) bed space needs of the Commonwealth. Available data reveal that only 11% of offenders convicted of misdemeanor violations of § 58.1-1017 received an active term of incarceration to serve after sentencing. While the impact of the proposal cannot be quantified, it is likely to be small.

Adult community corrections programs. Because the proposal could result in additional felony convictions and subsequent supervision requirements, it may affect adult community corrections resources. Nonetheless, the impact is likely to be small.

Virginia's sentencing guidelines. Misdemeanor convictions and felony convictions under § 58.1-1017 are not covered by the sentencing guidelines as the primary (most serious) offense. Such convictions, however, could 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 proposal is not expected to increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.