



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1415

(Patron – Wampler)

LD#: 11103936

Date: 1/14/2011

Topic: Manufacture, distribution, etc., of methamphetamine

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$5,005,978 (185 beds)
- **Local Adult Correctional Facilities:**
-\$348,721 (-33 beds)
- **Adult Community Corrections Programs:**
None (\$0)

- **Juvenile Correctional Centers:**
Cannot be determined
- **Juvenile Detention Facilities:**
Cannot be determined

Summary of Proposed Legislation:

The proposed legislation amends §§ 18.2-248.02 and 18.2-248.03, relating to methamphetamine.

The proposal creates a two-year mandatory minimum sentence for any violation of § 18.2-248.02 whereby a custodian knowingly allows a child to be present in the same dwelling, structure, or vehicle during the manufacture or attempted manufacture of methamphetamine.

The proposal also creates a two-year mandatory minimum sentence under § 18.2-248.03 for manufacturing, selling, distributing, or possessing with intent to distribute methamphetamine in any amount. Currently, § 18.2-248.03 outlines enhanced penalties for individuals who manufacture, sell, etc., more than a certain amount of methamphetamine. Offenses involving 28 grams or more of methamphetamine are subject to imprisonment for 5 to 40 years and a three-year mandatory minimum sentence. Offenses involving 227 grams or more of methamphetamine are subject to imprisonment for five years to life and a mandatory minimum sentence of five years.

Under § 18.2-248(C), manufacturing, selling, or distributing any Schedule I or II drug, or possessing such a drug with intent to sell, distribute, etc., is punishable by 5 to 40 years in prison. The maximum sentence for a second or third conviction under this subsection is life imprisonment, with the third offense carrying a mandatory minimum sentence of five years. Under § 18.2-248(C1), manufacturing methamphetamine is punishable by a term of 10 to 40 years. A second or subsequent conviction for manufacturing methamphetamine is punishable by 10 years to life, with a third or subsequent conviction carrying a mandatory minimum term of three years in prison.

Analysis:

According to the Circuit Court Automated Information System (CAIS) for fiscal year (FY) 2009 and FY2010, four offenders were convicted under § 18.2-248.02 for allowing a child to be present during the manufacture or attempted manufacture of methamphetamine. All four offenders were sentenced to state-responsible (prison) terms ranging from 1.0 to 18.8 years for this offense; however, only one of

the four offenders was sentenced below the proposed mandatory minimum of two years. In addition to this offense, all four offenders were convicted of at least one additional charge related to the distribution of a Schedule I/II drug. CAIS data also indicate that one offender during this two-year period was charged with a violation of § 18.2-248.03 for manufacturing, selling, etc., 28 grams or more of methamphetamine. This charge was later modified and the offender was convicted of possession of a Schedule I/II drug with intent to distribute under § 18.2-248(C). He was sentenced to a state-responsible (prison) term of 3.0 years.

According to FY2009 and FY2010 Sentencing Guidelines data, 5,251 offenders were convicted under § 18.2-248 for manufacturing, selling, etc., a Schedule I or II drug. In nearly all of these cases, the violation of § 18.2-248 was the primary, or most serious, offense. Most (63.7%) of the offenders received a state-responsible (prison) term, for which the median sentence was 2.2 years. Another 23.8% were given a local-responsible (jail) term, with a median sentence length of eight months. The remaining 12.5% did not receive an active term of incarceration in prison or jail. For the 17 cases where the distribution of a Schedule I or II drug was not the most serious offense, the primary offenses included murder, robbery, sale of marijuana to a minor, and forcible sodomy of a child under the age of 13.

Impact of Proposed Legislation:

State adult correctional facilities. By creating new mandatory minimum sentences, the proposal will increase the future state-responsible (prison) bed space needs of the Commonwealth. Given the limited data available for violations of § 18.2-248.02 (allowing a child to be present during the manufacture or attempted manufacture of methamphetamine), it is difficult to assess the impact of this aspect of the proposal. However, the impact of the proposed two-year mandatory minimum sentence for manufacturing, selling, etc., any amount of methamphetamine can be estimated. During a 2007 study of methamphetamine crime in Virginia, the Sentencing Commission found that, in FY2005, methamphetamine cases comprised 5% of the Schedule I or II drug cases examined. Based on this percentage, the impact of this aspect of the proposal is estimated to be 185 prison beds by FY2017. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$5,005,978.

Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY12	FY13	FY14	FY15	FY16	FY17
19	76	122	150	168	185

Local adult correctional facilities. The proposal is expected to decrease the need for local-responsible (jail) beds, as offenders who received a jail term in the past must be given a mandatory prison sentence under the proposal. The impact is estimated to be a decrease of 33 beds statewide, for a savings to the state of \$348,721 and \$552,871 to the localities.

Estimated Six-Year Impact in Local-Responsible (Jail) Beds

FY12	FY13	FY14	FY15	FY16	FY17
-13	-27	-29	-30	-31	-33

Adult community corrections resources. The proposal is not expected to increase the need for community corrections resources and will likely delay the need for services for offenders affected by the proposal, as they will remain incarcerated longer prior to being released to the community.

Virginia's sentencing guidelines. Convictions under §§ 18.2-248.02 and 18.2-248.03 are not covered by 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 is \$5,005,978 for periods of imprisonment in state adult correctional facilities. 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.

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety's Committee on Inmate Forecasting in 2010.
2. Cost per prison bed was assumed to be \$27,065 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*
3. Cost per jail bed was based on The Compensation Board's FY2009 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.86 per day or \$10,541 per year. The local cost was calculated by using the daily expenditure cost of \$87.30 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$45.75 per day or \$16,712 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

Assumptions relating to offenders

1. The number of offenders convicted for manufacturing, selling, etc., methamphetamine was estimated based on a 2007 study of methamphetamine crime in Virginia, in which the Sentencing Commission found that, in FY2005, methamphetamine cases comprised 5% of the Schedule I or II drug cases examined.¹ It was assumed that methamphetamine cases would account for 5% of Schedule I or II drug cases through FY2017.

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2011, is phased in to account for case processing time.
2. Offenders subject to the proposed mandatory minimum sentence were assumed to serve at least the mandatory minimum term specified in the proposal. If an offender was convicted of multiple counts, the mandatory minimum terms were assumed to run consecutively.²
3. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2009. For Schedule I/II drug sales, this rate was 12%.

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¹ 2007 Annual Report of the Virginia Criminal Sentencing Commission

² Recent analysis revealed that, in 96.9% of cases, judges set multiple mandatory minimum sentences to run consecutively (2010 Annual Report of the Virginia Criminal Sentencing Commission).