



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 878

(Patron – Reynolds)

LD#: 11101600

Date: 1/17/2011

Topic: Drug Control Act; pseudoephedrine

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:**
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 § 54.1-3450 to add pseudoephedrine to Schedule III of Virginia's Drug Control Act. Pseudoephedrine is an active ingredient in many cold and allergy medications; it is also a precursor chemical used in the production of methamphetamine. On September 1, 2005, Governor Warner issued an Executive Directive requiring the development of restrictions on the sale and purchase of products containing key ingredients used in the manufacture of methamphetamine. At the same time, Congress passed the Combat Methamphetamine Epidemic Act (CMEA), which required that products containing pseudoephedrine be placed "behind the counter" and that transaction logs account for sales of these products from retail outlets. Retail sales are limited to no more than 3.6 grams total of either ephedrine or pseudoephedrine daily per customer. According to a recent federal report, methamphetamine producers have found ways to circumvent the CMEA, and there has been an increase in the number of methamphetamine lab incidents.¹

Under § 18.2-248.8 of the *Code*, violation of the restrictions on purchases of products containing ephedrine or pseudoephedrine is a Class 1 misdemeanor. The proposal seeks to repeal this statute.

By adding pseudoephedrine to Schedule III, the proposal would prohibit the over-the-counter sale of products containing pseudoephedrine without a prescription (see § 18.2-250). Under the proposal, offenders who unlawfully obtain, possess, or distribute pseudoephedrine could be charged under several different provisions pertaining to Schedule III drugs, depending on the conduct. These include, but are not limited to:

¹ Office of National Drug Control Policy, "Fact Sheet: Methamphetamine Trends in the United States," <http://ondcp.gov/publications/html/pseudoephedrine.html> (accessed January 11, 2011).

- Prescription fraud, a Class 6 felony under § 18.2-258.1(A);
- Selling, distributing, or manufacturing a Schedule III drug, or possessing such a drug with intent to commit any of those acts, a Class 5 felony under § 18.2-248(E1);
- Possession of precursor substances with intent to manufacture methamphetamine, a Class 6 felony under § 18.2-248(J);
- Conspiracy to manufacture methamphetamine, a felony with a statutory penalty range of ten to forty years under § 18.2-248(C1);
- Unlawful possession of a Schedule III drug, a Class 1 misdemeanor under § 18.2-250(A,b).

Oregon began requiring a prescription for pseudoephedrine products in 2006. Mississippi became the second state to do so effective July 1, 2010, and Missouri will consider this change in 2011.²

Analysis:

According to the Circuit Court Automated Information System (CAIS) for fiscal year (FY) 2009 and FY2010, four offenders were convicted of a Class 1 misdemeanor for violating § 18.2-248.8 regarding unlawful purchase of products containing ephedrine or pseudoephedrine. All four offenders were sentenced to probation without an active term of incarceration to serve.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Offenders who obtain pseudoephedrine unlawfully may be convicted of a variety of drug offenses under several existing statutes. The type and 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, it 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. Prescription fraud under § 18.2-258.1(A) and possession with intent to sell or distribute a Schedule III drug under § 18.2-248(E1) are covered by the sentencing guidelines as the primary (most serious) offense. The other offenses listed above are not covered; 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.

² The Associated Press, "AP IMPACT: Meth Flourishes Despite Tracking Laws," <http://www.google.com/hostednews/ap/article/ALeqM5iHhoQ0Kc7zuwJDCYkdjkRCwB47Xg?docId=3758fd7c9cb7452eb65547aaa92ea9ef> (accessed January 11, 2011).

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.

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