



## Fiscal Impact Statement for Proposed Legislation

### *Virginia Criminal Sentencing Commission*

#### **Senate Bill No. 159**

#### ***Amendment in the Nature of a Substitute (Patron Prior to Substitute – Obenshain)***

**LD#:** 12105541

**Date:** 2/21/2012

**Topic:** Sale, distribution, etc., of a Schedule I or II drug

#### **Fiscal Impact Summary:**

- **State Adult Correctional Facilities:**  
\$11,726,915 (433 beds)
- **Local Adult Correctional Facilities:**  
None (\$0)
- **Adult Community Corrections Programs:**  
None (\$0)

- **Juvenile Correctional Centers:**  
None (\$0)
- **Juvenile Detention Facilities:**  
None (\$0)

#### **Summary of Proposed Legislation:**

Currently, under § 18.2-248(C), manufacturing, selling, giving, distributing, or possessing with intent to distribute a Schedule I or II drug in violation of § 18.2-248(C) is a felony punishable by incarceration of 5 to 40 years and a fine up to \$500,000. Upon a second or subsequent conviction under this subsection, when it is alleged in the warrant, indictment or information that the person has previously been convicted of such an offense and the prior conviction occurred before the date of the offense for which he is now charged, the offender may be sentenced to incarceration of five years to life in prison and be fined up to \$500,000. This subsection does not currently require a mandatory minimum term of incarceration for the second conviction. Upon a third or subsequent conviction, however, the subsection requires a mandatory minimum sentence of five years that must be served consecutively to any other sentence.

Under the proposal, any person convicted of a second offense under § 18.2-248(C) would be subject to a mandatory minimum term of incarceration of five years and a fine up to \$500,000. The proposal would increase the mandatory minimum term for a third or subsequent conviction from five years to ten years.

#### **Analysis:**

According to the most recent Sentencing Guidelines data for fiscal years 2010 and 2011, 491 offenders were convicted of a second offense involving the sale, distribution, etc., of a Schedule I or II drug under § 18.2-248(C).<sup>1</sup> Nearly all of these offenders (91%) received a state-responsible (prison) term, for which the median sentence was 3.7 years.

During the same time period, 121 offenders were convicted of a third or subsequent offense involving the sale, distribution, etc., of a Schedule I or II drug. All of these offenders received a state-responsible (prison) term, for which the median sentence was 7.0 years.

<sup>1</sup> Analysis includes completed acts only.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By creating a mandatory minimum term for offenders convicted of a second offense under § 18.2-248(C) and increasing the existing mandatory minimum for a third or subsequent conviction under this subsection, the proposal is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. The impact is estimated to be 433 beds by FY2018. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$11,726,915.

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

FY13	FY14	FY15	FY16	FY17	FY18
10	42	110	222	356	433

**Local adult correctional facilities.** The proposal is expected to decrease local-responsible (jail) bed space needs, as some offenders who otherwise would receive local-responsible (jail) terms must, under the proposal, receive state-responsible (prison) sentences.

**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 stay in prison longer prior to being released to the community.

**Virginia's sentencing guidelines.** Felony convictions under § 18.2-248(C) for a second or subsequent offense under this subsection are covered by the sentencing guidelines. No adjustment to the guidelines would be necessary under the proposal.

**Juvenile correctional centers.** Since mandatory minimum terms do not apply to juvenile court adjudications, the Department of Juvenile Justice (DJJ) does not anticipate an impact upon juvenile correctional center (JCC) bed space needs.

**Juvenile detention facilities.** Similarly, since mandatory minimum terms do not apply to juvenile court adjudications, the Department of Juvenile Justice (DJJ) does not anticipate an impact on the bed space needs of juvenile detention facilities.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$11,726,915 for periods of imprisonment in state adult correctional facilities and is \$0 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.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety's Committee on Inmate Forecasting and approved in 2010.
3. 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.*

**Assumptions relating to affected cases**

1. Analysis includes all cases involving a second conviction under § 18.2-248(C) and or a third or subsequent conviction under this subsection as the primary (most serious) offense in the case or as an additional offense to a more serious felony.

**Assumptions relating to sentence lengths**

1. The impact of the proposed legislation, which would be effective on July 1, 2012, is phased in to account for case processing time.
2. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. 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 felons serving a prison term for sale, distribution, etc., of a Schedule I or II drug, this rate was 12.0%.
3. It was assumed that all offenders convicted under § 18.2-248(C) who, in the past, received a sentence less than the proposed mandatory minimum term will, in the future, receive an effective sentence (imposed sentence less any suspended time) exactly equal to the mandatory minimum specified in the proposal.
4. Sentences for multiple counts of offenses affected by the proposed mandatory minimums were assumed to run consecutively.

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