



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#: 12105080

Date: 2/3/2012

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

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$5,512,531 (199 beds)
- **Local Adult Correctional Facilities:**
-\$96,217 (-9 beds)
- **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 three 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).¹ 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.

Impact of Proposed Legislation:

¹ Analysis includes completed acts only.

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 199 beds by FY2018. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$5,512,531.

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

FY13	FY14	FY15	FY16	FY17	FY18
11	43	108	144	160	199

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 nine beds statewide, for a savings to the state of \$96,217 and \$102,983 to the localities.

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

FY13	FY14	FY15	FY16	FY17	FY18
-4	-9	-9	-9	-9	-9

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 does not anticipate an impact on the bed space needs of juvenile detention facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$5,512,531 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 in 2011.
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 2011.
3. Cost per prison bed was assumed to be \$27,688 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 completed offense for 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. Offenders convicted of a completed offense (as the primary or an additional offense) meeting the criteria for the proposed mandatory minimums who were sentenced to less than the proposed mandatory minimums were assumed to serve 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. 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 the Department of Corrections' facilities were earning sentence credits as of December 31, 2010. For felons serving a prison term for sale, distribution, etc., of a Schedule I or II drug, this rate was 11.9%.

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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).