



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1806
As Engrossed
(Patron Prior to Engrossment – Garrett)

LD#: 13102542

Date: 2/7/2013

Topic: Possession of certain substances with intent to manufacture methamphetamine

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **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:

The proposed legislation amends subsection J of § 18.2-248 to refine the list of substances involved in the manufacture of methamphetamine. Possession of two or more of these substances, coupled with the intent to manufacture methamphetamine, is punishable as a Class 6 felony. The proposal adds ammonium nitrate to the list of prohibited substances; it also substitutes “lithium” for the phrase “lithium metal.”

According to the Department of Forensic Science (DFS), the insertion of “ammonium nitrate” and the deletion of the word “metal” from the term “lithium metal” in subsection J of § 18.2-248 will facilitate both the selection of items for forensic testing from among suspected meth lab evidence submitted and the testing of the selected evidence. Identifying ammonium nitrate, for example, is a more simple process than identifying other currently listed substances, and lithium, whether in a “salt” or “metal” form, is present in many methamphetamine production processes. Neither amendment, according to DFS, is likely to impact the number of instances in which two or more precursor substances are identified at a suspected crime scene or otherwise increase the likelihood of a conviction.

Analysis:

According to the Circuit Court Automated Information System (CAIS) for fiscal year (FY) 2011 and FY2012, 170 offenders were convicted of possession of precursor substances with intent to manufacture methamphetamine under § 18.2-248(J). However, this offense was the primary (most serious) offense at sentencing in only 18 cases. While 11 of these offenders (61%) did not receive an active term of incarceration to serve after sentencing, six offenders (33%) received a local-responsible (jail) sentence, with a median sentence of 4.5 months. One offender was sentenced to a state-responsible (prison) term of 1.5 years.

The remaining 152 of the 170 offenders were convicted of at least one other offense with a higher statutory maximum penalty (i.e., a maximum penalty exceeding the five-year maximum for possessing methamphetamine precursors). The offense carrying the highest statutory maximum penalty is identified as the primary offense in the case. For the majority (82.9%) of the 152 offenders, the primary offense involved the manufacture, sale, etc., of a Schedule I or II drug. While 21 additional offenders were convicted of possession of a Schedule I or II controlled substance under § 18.2-250(A,a) as the primary offense, one offender was convicted of manufacturing marijuana under § 18.2-248.1(c). The primary offense for the remaining four offenders ranged from forgery of a public record to grand larceny.

Impact of Proposed Legislation:

State adult correctional facilities. Expanding the existing list of substances involved in the manufacture of methamphetamine to include all forms of lithium and ammonium nitrate is unlikely to increase the state-responsible (prison) bed space needs of the Commonwealth. According to DFS, ammonium nitrate frequently occurs alongside the substances currently listed in § 18.2-248(J). As a result, an individual who possesses ammonium nitrate with the intent to manufacture methamphetamine is also likely in possession of other substances that would allow for felony prosecution under § 18.2-248(J). Also, according to DFS, lithium can be detected more quickly than lithium metal, although the presence of lithium can indicate that lithium metal was present at some point during the chemical reaction necessary to manufacture methamphetamine. For these reasons, the proposal is not expected to increase prison bed space needs.

Local adult correctional facilities. Similarly, the proposal is unlikely to affect local-responsible (jail) bed space needs.

Adult community corrections resources. The proposal is unlikely to affect adult community corrections programs.

Virginia's sentencing guidelines. Convictions under subsection J of § 18.2-248 are not covered by the 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, the proposal is not expected to increase juvenile correctional center 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 is \$0 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.