



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 1941

#### *Amendment in the Nature of a Substitute*

#### *(Patrons Prior to Substitute – Garrett and Loupassi)*

LD#: 13104485

Date: 1/23/2013

Topic: Regulation of synthetic cannabinoids and other compounds

#### 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:**  
Cannot be determined
- **Juvenile Detention Facilities:**  
Cannot be determined

\* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

#### Summary of Proposed Legislation:

The proposal amends §§ 18.2-248.1:1 and 54.1-3446, relating to the regulation of synthetic cannabinoids and other chemical compounds. Synthetic cannabinoids, also known as synthetic marijuana, K2, spice, or Mr. Smiley, are dried herbs sprayed with a chemical compound that, when smoked, creates a high similar to marijuana. However, synthetic cannabinoids can have numerous side effects that are not traditionally associated with marijuana, including rapid heart rate and seizures. Synthetic stimulants sold under the guise of “bath salts” are comprised of a class of chemicals perceived as mimics of cocaine, LSD, MDMA (ecstasy), and/or methamphetamine.

The 2011 General Assembly passed emergency legislation (HB1434/SB745) adding § 18.2-248.1:1 to the *Code of Virginia* to create specific penalties for possessing, selling, giving, distributing, or possessing with intent to distribute synthetic cannabinoids. This legislation also added synthetic cannabinoids to numerous other sections of the *Code* relating to controlled substances and marijuana. First offense possession of synthetic cannabinoids is a Class 1 misdemeanor. Selling, giving, distributing, or possessing with intent to distribute synthetic cannabinoids is a Class 6 felony punishable by imprisonment from one to five years. Distribution of synthetic cannabinoids as an accommodation is a Class 1 misdemeanor; if distributed to an inmate, the offense is a Class 4 felony punishable by imprisonment from two to ten years. Manufacture of synthetic cannabinoids is a felony punishable by imprisonment from five to thirty years. With some exceptions, the penalties for offenses involving synthetic cannabinoids mirror those for the corresponding crimes involving marijuana. In 2012, the General Assembly expanded § 18.2-248.1:1 to include cannabimimetic agents. Despite these changes, manufacturers continue to circumvent state law by altering the chemical composition of the synthetic cannabinoids. The reformulated substances are then substituted for the currently banned ones.

The 2011 and 2012 bills also amended § 54.1-3446 to include several additional synthetic stimulants as Schedule I drugs in Virginia's Drug Control Act. Currently, possession of a Schedule I or II drug is a Class 5 felony, punishable by imprisonment of 1 to 10 years. Selling, distributing, or manufacturing a Schedule I or II drug, or possessing such a drug with the intent to sell, distribute, or manufacture, is punishable by imprisonment from five to forty years with a maximum fine of \$500,000. The maximum sentence for a second conviction of selling, distributing, etc., is life imprisonment, with a mandatory minimum sentence of three years; for a third conviction, the mandatory minimum sentence is ten years. Distribution of a Schedule I or II drug by accommodation is a Class 5 felony. The *Code* includes additional felonies for transporting a Schedule I or II drug into the Commonwealth, distributing a Schedule I or II drug to a person under the age of 18, distributing near schools or other specified properties, and for possessing a Schedule I or II drug while possessing a firearm.

The proposed legislation amends § 18.2-248.1:1 to add a number of chemical compounds newly classified as synthetic cannabinoids. The proposal also amends § 54.1-3446 to add a number of synthetic stimulants (popularly marketed as "bath salts") to the list of Schedule I controlled substances in Virginia's Drug Control Act.

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### **Analysis:**

On March 1, 2011, the US Drug Enforcement Agency (DEA) issued an order temporarily controlling five chemicals (JWH-018, JWH-073, JWH-200, CP-47, 497, and cannabicyclohexanol) used to make synthetic marijuana. These chemicals were then officially classified as Schedule I controlled substances as part of the federal Synthetic Drug Abuse Prevention Act of 2012 (S. 3187), signed into law by President Obama on July 9, 2012.<sup>1</sup> On October 21, 2011, the DEA took similar action with regard to three synthetic stimulants (mephedrone, 3,4-methylenedioxypyrovalerone (MDPV), and methylone) used to make products marketed as "bath salts" and "plant food". These chemicals were temporarily designated as Schedule I substances while the DEA and the Department of Health and Human Services studied whether they should be permanently controlled. Subsequently, mephedrone and MDPV were officially classified as Schedule I; final action on methylone is pending.<sup>2</sup>

Virginia's emergency legislation relating to crimes involving synthetic cannabinoids was signed by the governor and became effective as of March 23, 2011; as a result, a limited amount of sentencing data pertaining to these crimes has been observed in the databases available to the Commission. According to fiscal year (FY) 2012 data from the General District Court Automated Information System (CAIS), 69 offenders were convicted of a first offense for possession of synthetic cannabinoids as their primary (most serious) offense at sentencing. The majority (78%) of these offenders were sentenced to probation with no active term of incarceration to serve. The remaining offenders (22%) were sentenced to local-responsible (jail) terms with a median sentence of approximately 24 days.

According to FY2012 Circuit Court CAIS data, two offenders were convicted of a Class 6 felony for selling synthetic cannabinoids; one offender received probation without a term of incarceration and the other (also convicted of probation violations) was sentenced to 15 months imprisonment. Another two offenders were convicted of misdemeanor possession of synthetic cannabinoids. Offenders convicted of a misdemeanor violation in Circuit Court were either (i) originally charged with a felony or (ii) had a misdemeanor charge that accompanied a felony charge. One offender, convicted of possession of synthetic cannabinoids and failing to identify oneself to law enforcement (also a misdemeanor), was sentenced to two months in jail. The other offender, convicted of felony possession of a Schedule I or II drug as well as possession of synthetic cannabinoids, was sentenced to three months in jail.

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<sup>1</sup> New Legislation on Synthetic Drugs: A Message from ONDCP. Office of Community Oriented Policing Services (COPS), U. S. Department of Justice. Available at <http://www.cops.usdoj.gov/html/dispatch/08-2012/News-from-ONDCP.asp>.

<sup>2</sup> Schedules of Controlled Substances: Placement of Methylone into Schedule I. Office of Diversion Control, DEA, U. S. Department of Justice. Available at [http://www.deadiversion.usdoj.gov/fed\\_regs/rules/2012/fr1017.htm](http://www.deadiversion.usdoj.gov/fed_regs/rules/2012/fr1017.htm).

Sentencing information is available for cases involving drugs currently listed in Schedules I or II. According to fiscal year (FY) 2011 and FY2012 Sentencing Guidelines (SG) data, there were 12,204 felony sentencing events involving Schedule I or II drug crimes. In these cases, the Schedule I or II drug crime was the primary (or most serious) offense. Approximately 55% of these convictions involved simple possession. Half of the offenders convicted of simple possession were sentenced to a term of incarceration: 39% were given a local-responsible (jail) term and 11% received a state-responsible (prison) term. For possession offenders committed to prison, the median sentence was 1.5 years. Offenders convicted for selling, distributing, etc., (§ 18.2-248(C)) were much more likely to be incarcerated. While 24% were sentenced to serve time in jail, 64% received a prison term. For offenders committed to prison for a sales or distribution-related offense, the median sentence was 2.3 years.

Data are insufficient to identify Schedule I or II drug convictions that involved “bath salts” or the number of other incidents involving possession or sale, etc., of a substance that would be affected by the proposal.

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### **Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposed legislation amends § 18.2-248.1:1 to add several chemicals to the list of synthetic cannabinoids. The proposal also adds a number of synthetic stimulants (“bath salts”) and other compounds to Schedule I of Virginia’s Drug Control Act. Thus, the proposal may increase the need for state-responsible (prison) beds. The number of additional felony convictions that could result from the proposal cannot be estimated; therefore, the impact of the proposal cannot be determined.

**Local adult correctional facilities.** Local-responsible (jail) bed space needs may increase due to the expansion of felony and misdemeanor crimes associated with synthetic cannabinoids and Schedule I controlled substances; however, the magnitude of the impact cannot be determined.

**Adult community corrections resources.** Because the proposal may result in additional felony offenders on community supervision, the proposal may have an impact on local and state community corrections resources. However, the full cost of the impact on adult community corrections cannot be estimated.

**Virginia’s sentencing guidelines.** Simple possession of a Schedule I or II drug (§ 18.2-250(A)) and sales and distribution-related offenses defined in § 18.2-248(C) are currently covered by the sentencing guidelines as the primary (most serious) offense. Therefore, many of the crimes involving the newly defined synthetic drugs added to Schedule I would be covered by the sentencing guidelines. However, felony convictions under § 18.2-248.1:1 for offenses involving synthetic cannabinoids are not covered by the sentencing guidelines as the primary (most serious) offense. A conviction under one of these provisions (as an additional offense) 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.** The Department of Juvenile Justice (DJJ) reports that, while this proposal could cause an increase in commitments, the impact of the proposal on bed space needs for juvenile correctional centers cannot be determined.

**Juvenile detention facilities.** The Department of Juvenile Justice (DJJ) reports that this proposal’s impact on detention center bed space cannot be determined.

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**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 3 of the Acts of Assembly of 2012, Special Session I, 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

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