



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 676

(Patron – Poindexter)

LD#: 14102858

Date: 12/27/2013

Topic: Manufacture, etc., of methamphetamine

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$2,660,812 (89 beds)
- **Local Adult Correctional Facilities:**  
None (\$0)
- **Adult Community Corrections Programs:**  
None (\$0)

- **Juvenile Correctional Centers:**  
Cannot be determined
- **Juvenile Detention Facilities:**  
Cannot be determined

#### Summary of Proposed Legislation:

The proposal amends § 18.2-248.03, relating to the manufacture or distribution of mixtures containing methamphetamine (this section only applies to methamphetamine mixtures and does not apply to pure forms of methamphetamine). Currently, under § 18.2-248.03(A), any person who manufactures, sells, gives, distributes, or possesses with intent to manufacture, etc., 28 grams or more of a mixture containing methamphetamine is guilty of a felony punishable by a fine of not more than \$500,000 and imprisonment from five to forty years, three years of which is a mandatory minimum term. If the amount involved is 227 grams or more, the offense is punishable by a fine of not more than \$1 million and imprisonment from five years to life, with a five-year mandatory minimum term of incarceration.

Under the proposal, the statutory minimum and the mandatory minimum sentence for both offenses would be increased to ten years.

#### Analysis:

According to the Circuit Court Case Management System (CMS)<sup>1</sup> for fiscal year (FY) 2012 and FY2013, 116 offenders were convicted of a completed felony under § 18.2-248.03(A) or (B) for the manufacture, etc., of a methamphetamine mixture. A conviction under § 18.2-248.03(A) for manufacture, etc., of 28 grams or more of a methamphetamine mixture was their primary (most serious) offense at sentencing in 48 cases. All of these offenders were sentenced to a state-responsible (prison) term, with a median sentence of three years. A conviction under § 18.2-248.03(B) for manufacture, etc., of 227 grams or more of a methamphetamine mixture was the primary offense in an additional 15 cases. These offenders were sentenced to prison terms with a median sentence of 5.5 years. For the remaining 53 offenders, the conviction under § 18.2-248.03 was accompanied by additional felony narcotics violations under § 18.2-248.

<sup>1</sup> Formerly referred to as the Court Automated Information System (CAIS).

Regarding the Department of Juvenile Justice (DJJ), Court Service Units serve as the point of entry into the juvenile justice system. An “intake” occurs when a juvenile is brought before a court service unit officer for one or more alleged law violations. The DJJ reports that there have been no petitioned intake cases for a violation of § 18.2-248.03 during the last five years.

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### Impact of Proposed Legislation:

**State adult correctional facilities.** By increasing existing mandatory minimum penalties, the proposal is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. The impact on state-responsible (prison) beds is estimated to be 89 beds by FY2020. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$2,660,812.

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

FY15	FY16	FY17	FY18	FY19	FY20
0	0	0	16	46	89

**Local adult correctional facilities.** The proposal is not expected to impact the need for local-responsible (jail) beds, since offenders who are currently convicted of a completed offense under § 18.2-248.03 must be sentenced to a state-responsible (prison) term.

**Adult community corrections resources.** The proposal is not expected to increase the need for community corrections resources and will delay the need for services for some 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 § 18.2-248.03 are not covered by the sentencing guidelines as the primary (most serious) offense in a case; however, convictions for these crimes may 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), mandatory minimum terms of incarceration only apply to juveniles if they are transferred to Circuit Court. Increasing the mandatory minimum penalties for the affected offenses could increase the amount of time a juvenile could serve in a juvenile correctional center if transferred and sentenced in circuit court with a determinate or blended sentence. However, it is not possible to predict how many juveniles may be transferred to Circuit Court in the future and subsequently subjected to the proposed increase in mandatory minimums when in DJJ custody. As a result, the potential fiscal impact on bed space needs for juvenile correctional centers cannot be quantified.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal’s impact on juvenile detention center bed space needs cannot be determined.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$2,660,812 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

#### Assumptions underlying the adult state-responsible and local-responsible analyses 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 2013.
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 2013.

3. Cost per prison bed was assumed to be \$30,006 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 under § 18.2-248.03 as the primary (most serious) offense in the case or as an additional offense to a more serious felony.

**Assumptions relating to sentencing**

1. The impact of the proposed legislation, which would be effective on July 1, 2014, 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.<sup>2</sup>
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, 2012. For felons serving a prison term for Schedule I/II drug sales offenses, this rate was 10.3%.

**Limitations**

1. The Circuit Court Case Management System excludes cases from Alexandria, Fairfax, and Virginia Beach.

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<sup>2</sup> 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).