



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 277

(Patron – Miyares)

LD#: 16101314

Date: 12/31/2015

Topic: Manufacture, sale, etc., of heroin

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$16,691,576 (531 beds)
- **Local Adult Correctional Facilities:**
At least -\$245,851 (-22 beds)
- **Adult Community Corrections Programs:**
None (\$0)

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

* Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposal amends § 18.2-248 of the *Code* to establish a mandatory minimum term of 10 years for any violation of this section involving heroin. The proposal requires that the mandatory minimum be served consecutively with any other sentence, including any imposed for a violation of § 18.2-248.

Currently, under § 18.2-248, the first offense for selling, distributing, or manufacturing a Schedule I or II drug, or possessing such a drug with the intent to sell, etc., is punishable by imprisonment from five to forty years. 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 or subsequent conviction, the mandatory minimum sentence is ten years. Distribution of a Schedule I or II drug by accommodation is a Class 5 felony. Additionally, there are several existing mandatory minimum sentences associated with heroin distribution based on the quantity involved.

Analysis:

According to the Sentencing Guidelines database for fiscal year (FY) 2014 and FY2015, at least 5,318 offenders were convicted of a completed felony under § 18.2-248 involving the sale, etc., of a Schedule I or II controlled substance. Pre/Post-Sentence Investigation Report (PSI) data indicate that at least 311 of the 5,318 cases involved heroin, and therefore would be subject to the proposed mandatory minimum term. When a violation of § 18.2-248 was the primary, or most serious, offense in the case, 68.2% received a state-responsible (prison) term, for which the median sentence was three years.

Impact of Proposed Legislation:

State adult correctional facilities. By establishing a new 10-year mandatory minimum term for violations of § 18.2-248 involving heroin, the proposal will increase the state-responsible (prison) bed space needs of

the Commonwealth. Existing data sources do not contain sufficient detail to identify all cases that would be affected by the proposal, such as cases where a Pre/Post-Sentence Investigation Report (PSI) was not prepared or where the offense narrative did not specify the type of drug involved. Based on data currently available to the Commission, the impact on state-responsible (prison) bed space needs is estimated to be at least 531 beds by FY2022. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$16,691,576.

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

FY17	FY18	FY19	FY20	FY21	FY22
18	73	158	268	392	531

Local adult correctional facilities. The proposal is expected to reduce the future need for local-responsible (jail) beds, as offenders currently serving a jail term will serve a prison term under the proposal. The impact on local-responsible (jail) beds is estimated to be a decrease of at least 22 beds by FY2022 (state savings: at least \$245,851; local savings: at least \$361,335).

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

FY17	FY18	FY19	FY20	FY21	FY22
-11	-21	-22	-22	-22	-22

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. While felony violations of § 18.2-248 (C) and (D) are covered by the sentencing guidelines, convictions under other subsections of § 18.2-248 involving Schedule I or II drugs are not covered by the guidelines as the primary, or most serious, offense. Such convictions, however, could augment the sentence recommendation if the most serious offense is covered by the guidelines. No adjustment to the guidelines is necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

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

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$16,691,576 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 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 2015.
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 2015.
3. Cost per prison bed was assumed to be \$31,406 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.*

4. Cost per jail bed was based on The Compensation Board's FY2014 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$30.57 per day or \$11,166 per year. The local cost was calculated by using the daily expenditure cost of \$78.53 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$44.93 per day or \$16,411 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.***

Assumptions relating to affected cases

1. Analysis includes all cases with a completed offense under § 18.2-248 as the primary (most serious) offense in the case or as an additional offense to a more serious felony if the offense description in the PSI report indicated that the offense involved heroin.

Assumptions relating to sentencing

1. The impact of the proposed legislation, which would be effective on July 1, 2016, 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 minimum who were sentenced to less than the proposed mandatory minimum were assumed to serve the mandatory minimum term specified in the proposal.
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, 2014. For felons serving a prison term for the sale, distribution, etc., of a Schedule I or II drug, this rate was 10.2%.

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