



# Fiscal Impact Statement for Proposed Legislation

## Virginia Criminal Sentencing Commission

### Senate Bill No. 159 (Patron– Obenshain)

**LD#:** 12101835

**Date:** 12/19/2011

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

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$1,285,437 (46 beds)
- **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:

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. Currently, this subsection does not require a mandatory minimum term of incarceration for the second conviction. Under the proposal, any person convicted of a second offense under § 18.2-248(C) who has previously been convicted of a violent offense set forth in § 17.1-805 would be subject to a mandatory minimum term of incarceration of five years. For offenders whose prior violent offense carries a maximum term of 40 years or more, the proposal requires that judges run the term of incarceration consecutively with any other sentence. The proposal also reasserts that offenders who have previously been convicted of a violent felony would be fined not more than \$500,000, which is the existing fine for all offenders who are convicted of a second offense.

Currently, upon a third conviction under § 18.2-248(C), the subsection requires a mandatory minimum sentence of five years that must be served consecutively to any other sentence. The proposal would increase the mandatory minimum term for this offense from five 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).<sup>1</sup> Nearly all of these offenders (91%) received a state-responsible (prison) term, for

<sup>1</sup> Analysis includes completed acts only.

which the median sentence was 3.7 years. Approximately 18% of these offenders had a prior conviction for a violent felony as defined in § 17.1-805. Among offenders with a prior violent felony conviction, 94% received a prison term, with a median sentence 6.0 years. None of the offenders with a prior violent felony conviction received a local-responsible (jail) sentence.

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 offenders received a state-responsible (prison) term; the median sentence was 7.0 years.

**Impact of Proposed Legislation:**

**State adult correctional facilities.** By creating a mandatory minimum term for certain 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 46 beds by FY2018. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$1,285,437.

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

FY13	FY14	FY15	FY16	FY17	FY18
1	4	7	14	25	46

**Local adult correctional facilities.** Since, in FY2010 and FY2011, none of the offenders with a prior violent felony conviction who were convicted of a second offense under § 18.2-248(C) received a local-responsible (jail) sentence and all of the offenders convicted of a third offense must currently receive a prison sentence, the proposal is not expected to impact the need for local-responsible (jail) beds.

**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 most likely be staying 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 \$1,285,437 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 sentencing**

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.<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, 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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<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).