



*Legislative Impact Analysis for the
2005 Virginia General Assembly*

Code of Virginia § 30-19.1:4

- The Virginia Criminal Sentencing Commission must prepare a fiscal impact statement for any bill which would result in a net increase in the population of offenders housed in state adult correctional facilities.
- Current law became effective July 1, 2000.
- Effective July 1, 2002, the impact statement must:
 - **Include analysis of the impact on local and regional jails as well as state and local community corrections programs;**
 - **Detail any necessary adjustments to the sentencing guidelines.**

Code of Virginia § 30-19.1:4

- The amount of the estimated increase in operating costs identified in the Commission's impact statement must be printed on the face of the bill.
- For each law enacted that results in a net increase in the prison population, a one-year appropriation must be made.
 - **Appropriation is equal to the highest single-year increase in operating cost for the six years following the effective date of the law.**
- Appropriations per § 30-19.1:4 are deposited into the Corrections Special Reserve Fund.

Legislative Impact Analysis

- The requirement for an impact statement includes, but is not limited to, those proposals that:
 - **Add new crimes for which imprisonment is authorized;**
 - **Increase the periods of imprisonment authorized for existing crimes;**
 - **Raise the classification of a crime from a misdemeanor to a felony;**
 - **Impose minimum or mandatory terms of imprisonment; or**
 - **Modify the law governing release of prisoners.**

Legislative Impact Analysis

- The necessary appropriation is calculated by:
 - **Estimating the net increase in the prison population likely to result from the proposal for the six years following enactment;**
 - **Multiplying the highest single-year figure by the cost of holding a prison inmate for a year (operating costs, not to include capital costs);**
 - **For 2004, the annual operating cost per prison inmate was \$22,854.**

2005 General Assembly–243 Impact Analyses Completed

Type of Legislative Change	% of Analyses
Expansion or Clarification of Crime	31.3%
New Crime	37.9%
Misdemeanor to Felony	16.5%
Mandatory Minimums	4.9%
Increase Felony Penalty	7.4%
Increase Misdemeanor Penalty	0.0%
Presumptive Denial of Bail	0.8%
Normative Modification of Guidelines	2.9%
Death Penalty	2.9%
Decrease Penalty	0.0%

Percentages do not add to 100% as proposed legislation can involve multiple types of changes.

Multiple analyses may be performed on each bill, depending on the number of amended and substitute versions that are adopted.

Type of Offenses in Proposed Legislation

- **Drugs (48 analyses)**
 - **Methamphetamine (10 analyses)**
 - **Methamphetamine precursors (9 analyses)**
 - **Schedule III/IV (8 analyses)**
 - **DUI & Drugs (6 analyses)**
 - **Cocaine (5 analyses)**
 - **Counterfeit drugs (3 analyses)**
 - **Other (7 analyses)**

Type of Offenses in Proposed Legislation

- **Computer crimes (25 analyses)**
 - **Phishing (9 analyses)**
 - **Modernizing computer statutes (16 analyses)**
- **Sex offenses and offenders (23 analyses)**
 - **Carnal knowledge/indecent liberties (9 analyses)**
 - **Sex Offender Registry (8 analyses)**
 - **Marital sexual assault (4 analyses)**
 - **Other (2)**

Type of Offenses in Proposed Legislation

- **Firearms (23 analyses)**
 - **Sentencing guidelines (6 analyses)**
 - **Convicted felon in possession of firearm (6 analyses)**
 - **Unlawful possession by juvenile (5 analyses)**
 - **Gun shows (4 analyses)**
 - **Other (2 analyses)**
- **Gangs (19 analyses)**
 - **Gang criminal activity (17 analyses)**
 - **Gang murder (2 analyses)**

Proposal to Raise Misdemeanor to a Felony

- House Bill 2688 (Stalking)
 - **The proposal amends § 18.2-60.3 by increasing the penalty for a second or subsequent conviction for stalking within two years from a Class 1 misdemeanor to a Class 6 felony.**

Proposal to Add Mandatory Minimum Sentences

- Senate Bill 865 (Cocaine)
 - The proposal amends § 18.2-248(C) to increase the penalty for a third or subsequent violation and to add new mandatory, minimum penalties for other violations related to manufacturing, selling, giving, distributing or possessing with intent to manufacture, sell, give or distribute cocaine.
 - The proposal adds a 5-year mandatory, minimum sentence for the first violation and a 15-year mandatory, minimum term for any second violation.

Proposal to Add Mandatory Minimum Sentences

- Senate Bill 865 - continued
 - **Currently, the first and second violations of this provision are punishable by imprisonment of 5 to 40 years and 5 years to life, respectively.**
 - No mandatory penalties are specified under current law.
 - **For a third violation, currently subject to a three-year mandatory, minimum sentence, the proposal increases the penalty to a Class 1 felony (punishable by life imprisonment or death).**

Impact Analysis



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Date Submitted: 1/3/2005

LD #: 05-5403216

Topic: Convictions for the sale of cocaine

Proposed Change:

The proposal amends § 18.2-248(C) to add new and increase existing mandatory, minimum penalties for manufacturing, selling, giving, distributing or possessing with intent to manufacture, sell, give or distribute cocaine. The proposal adds a 5-year mandatory, minimum sentence for the first violation and a 15-year mandatory, minimum term for any second violation. Currently, the first and second violations of this provision are punishable by imprisonment of 5 to 40 years and 5 years to life, respectively; no mandatory penalties are specified under current law. For a third violation, the proposal increases the existing mandatory, minimum sentence from three years to life.

Analysis:

According to fiscal year (FY) 2002 and 2003 Pre/Post-Sentence Investigation (PSI) data, there were 1,490 cocaine-related cases resulting in conviction under § 18.2-248(C) involving offenders who were convicted of a single count and who had no prior convictions this offense. Of these offenders, 23% were given no active term of incarceration, 20% were given a local-responsible (jail) term, and 57% received a state-responsible (prison) term (median sentence of two years).

During the same two-year period, PSI data indicate there were 563 cocaine-related cases under § 18.2-248(C) where the offender was convicted of two counts or the offender was convicted of one count but had a prior conviction under the same statute. Of these, 17% were not given active incarceration and 7% were sentenced to jail; more than three in every four (76%) of these offenders were given a prison term (median sentence of two and a half years).

These PSI data also contain 337 cocaine-related convictions under § 18.2-248(C) where the offender had a total combination of three or more current or prior convictions under the same statute. In these cases, 15% received no active incarceration and 6% were ordered to serve time in jail; more than 79% of these offenders were sentenced to prison (median sentence of three years).

Impact of Proposed Legislation:

By adding and enhancing mandatory, minimum penalties for manufacturing, selling, giving, distributing or possessing with intent to distribute cocaine, the proposed legislation will increase the state-responsible (prison) bed space needs of the Commonwealth. If the proposed mandatory penalties are applied in all eligible cases, it is estimated that the impact of the proposal will be 3,728 beds by FY2011.

Impact Analysis

In addition, the proposal will result in a reduction in the need for local-responsible (jail) bed space, as offenders who historically have received jail terms will receive prison sentences as a result of the proposed mandatory terms. Based on the same methodology, there will be a need

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

FY06	FY07	FY08	FY09	FY10	FY11
173	673	1369	2227	3148	3728

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

FY06	FY07	FY08	FY09	FY10	FY11
-87	-190	-205	-211	-217	-226

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Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$85,209,537 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.

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inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2003. For Schedule I or II drug sale offenses, this rate was 9.95%. Release dates for local-responsible felony convictions

Proposal to Create New Crime

- House Bill 1974 (Methamphetamine precursors)
 - The proposed legislation adds § 18.2-248.8 to make it a Class 6 felony to unlawfully possess certain substances used for manufacturing methamphetamine.
 - In addition, under the proposal, any person who sells, transfers, distributes or furnishes any listed substance to another person with knowledge that the substance will be used for the manufacture of methamphetamine shall be guilty of a Class 6 felony.