



## Impact Analysis on Proposed Legislation

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*Virginia Criminal Sentencing Commission*

### **House Bill No. 632** *Amendment in the Nature of a Substitute (S1)* *(Patron Prior to Substitute – O'Bannon)*

**Date Submitted:** 3/1/04

**LD #:** 04-1029440

**Topic:** Unlawful procurement of prescription drugs for others

#### **Proposed Change:**

The proposal adds a section numbered § 18.2-258.2 relating to unlawful procurement of prescription drugs for others. The proposal states that any person who, for compensation, knowingly assists another in procuring prescription drugs from a source known not to be licensed, registered or permitted by the licensing authority in Virginia, the United States or any other state or territory of the United States is guilty of a Class 1 misdemeanor with a maximum penalty of 12 months in jail for a first offense, and a Class 6 felony with a maximum penalty of five years imprisonment for a subsequent offense.

Currently, there is no prohibition for a person to assist another in filling a properly obtained prescription, whether compensated or not, from any legal source. However, procuring, or attempting to procure, controlled substances by fraud, deceit, misrepresentation, embezzlement, or subterfuge, or by the forgery or alteration of a prescription, is a crime punishable as a Class 6 felony under § 18.2-258.1. Also, it is unlawful for any person to make or utter any false or forged prescription as specified in the same *Code* section. For violation of § 18.2-258.1, a first-time offender of prescription fraud is eligible for "first offender" status under the same section of the *Code*; upon fulfillment of a probationary term, the offender is convicted of a Class 1 misdemeanor rather than the original felony charge.

#### **Data Analysis:**

The Commonwealth's criminal justice databases do not have information available on the number of Virginians who obtain prescription drugs outside of the United States and its territories by means of compensated assistance. Currently, if the prescription was legally obtained and the prescription drugs are used by the intended patient, no crime is committed when the prescription is filled, with compensated assistance, by a source outside of the United States or its territories.

According to fiscal year (FY) 2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, 672 offenders were convicted under the felony provisions of § 18.2-258.1 for prescription fraud.

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The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.

Felony crimes under the statute are Class 6 felonies. The majority of these offenders were sentenced to no incarceration. Of the few that were sentenced to state-responsible (prison) time, those convicted of obtaining drugs by fraud were given a median sentence of 21 months, and those convicted of uttering a false or forged prescription were given a median sentence of 24 months. See the *Background Sentencing Information* below for more details.

**Background Sentencing Information**

Felony Crimes	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median State Responsible Sentence
Obtain drugs by forgery, fraud (§ 18.2-258.1(A))	620	85%	11%	5%	21 months
Assume title of doctor, pharmacist, etc. to obtain drugs (§ 18.2-258.1(D))	10	70%	30%	0%	--
Utter false or forged prescription (§ 18.2-258.1(E))	40	80%	13%	7%	24 months

Data Source: FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) database

**Impact of Proposed Legislation:**

The proposed legislation adds a section to Title 18.2. The number of Virginians who obtain prescription drugs outside of the United States and its territories by means of compensated assistance is unknown, much less the number of persons who would continue to assist in the procurement of such drugs if the proposal is enacted. For this reason, the impact on state-responsible (prison) and local-responsible (jail) bed space needs cannot be quantified. However, the felony provision proposed only applies to a subsequent offense of a newly defined crime.

**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 and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

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