



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 325

(Patron – Stolle)

Date Submitted: 1/12/04

LD #: 04-1380820

Topic: Counterfeit drugs

Proposed Change:

The proposal amends § 54.1-3401 and adds a section numbered § 54.1-3455.1 relating to counterfeit drugs. The amendment defines “counterfeit drug.” The added section defines a new crime related to the manufacture, sale, possession, distribution, dispensing or the facilitation to distribute or dispense any counterfeit drug. The penalty for this new crime is based on the comparable activity as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 for the controlled substance the counterfeit drug purports to be.

Under the proposal, selling, manufacturing, distributing, or possessing with intent to distribute a counterfeit Schedule I or II drugs would be punishable by a term of five years to 40 for a first offense, and five years to life for a subsequent offense using the penalty structure found in § 18.2-248. Similarly, sales-related offenses involving a Schedule III, IV or V counterfeit drug would be punishable as a Class 1 misdemeanor under the same statute.

Currently, under § 59.1-96, it is unlawful to package, sell, buy, give, and so forth, a number of commercial products, including medicine and medical preparations, falsely marked or distinguished as the product of another. A first conviction is punishable by 10 days to 1 year, and a subsequent conviction is punishable by 20 days to 1 year. Furthermore, under § 18.2-248, it is unlawful to sell, distribute, manufacture, or possess with intent certain imitation drugs. It is a Class 6 felony if the drug is purported to be among those on Schedule I or II; if the drug is purported to be among those on Schedules III, IV or V, the crime is a Class 1 misdemeanor.

Data Analysis:

According to fiscal year (FY) 2001 and FY2002 Local Inmate Data System (LIDS) data, which contains information on persons held pre- or post-trial in local jails, 52 persons were convicted of selling a Schedule III through V imitation drug; of these, 10% were not sentenced to any additional term of incarceration, 79% were sentenced to a local-responsible (jail) term with a median sentence of six months, and 11% were sentenced to a state-responsible (prison) term for accompanying felony charges.

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.

According to FY2001 and FY2002 LIDS data, 156 persons were convicted for the sale of a Schedule III through V drug; of these 8% were not sentenced to any additional term of incarceration, 75% were sentenced to a local-responsible (jail) term with a median sentence of three months, and 17% were sentenced to a state-responsible (prison) term for accompanying felony charges.

There were no cases found for these offenses in the FY2001 and FY2002 LIDS data for violations under § 59.1-96 for the unlawfully using names on packages or containers.

Background Sentencing Information

Misdemeanor Crimes	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Local Responsible Sentence
Sale, etc. Schedule III, IV or V drug (§ 18.2-248(F))	156	8%	75%	17%	3 mos
Sale, etc. Schedule III, IV or V imitation drug (§ 18.2-248(F))	41	10%	78%	11%	6 mos

Data Source: FY2001 and FY2002 Local Inmate Data System (LIDS) database

According to the FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) database, there were 288 convictions for sales-related offenses involving an imitation Schedule I or II drug. Of these, 39% were sentenced to probation, 37% were sentenced to a jail term, and 24% were sentenced to a prison term with a median sentence of 1.5 years.

Background Sentencing Information

Felony Crimes	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median State Responsible Sentence
Sale, etc. Schedule I or II drug (§ 18.2-248(C))	4751	24%	19%	57%	2 yrs
Sale, etc. Schedule I or II imitation drug (§ 18.2-248(G))	288	39%	37%	24%	1.5 yrs

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

Impact of Proposed Legislation:

The proposed legislation adds a section to Title 54.1 relating to Professions and Occupations that would raise the penalties for counterfeit drugs. As existing criminal justice databases are unable to distinguish between crimes entailing counterfeit drugs and crimes involving other real or imitation drugs, the number of affected cases cannot be determined.

The Department of Juvenile Justice (DJJ) reports that if enacted, the minimum assignment on the Department's Length of Stay (LOS) guidelines would change from 6-12 months for a Class 6 felony to

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18-36 months for a felony with a maximum of 40 years or life. Nonetheless, DJJ is unable to identify the number of juveniles that may be affected and, therefore, cannot determine the size of the impact.

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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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