



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 325

Amendment in the Nature of a Substitute (Patron Prior to Substitute – Stolle)

Date Submitted: 3/3/04

LD #: 04-0225820

Topic: Counterfeit controlled substances

Proposed Change:

The proposal amends § 18.2-247 relating to controlled substances. The amendment defines a “counterfeit controlled substance” as “a controlled substance that, without authorization, bears, is packaged in a container or wrapper that bears, or is otherwise labeled to bear, the trademark, trade name, or other identifying mark, imprint or device or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the manufacturer, processor, packer, or distributor who did in fact so manufacture, process, pack or distribute such drug.” The proposal also expands the definition of an “imitation controlled substance” to include counterfeit controlled substances.

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.

Felony convictions for the sale, distribution, manufacture, or possession with intent to distribute imitation Schedule I or II drugs are covered by the sentencing guidelines as the primary (most serious) offense in a sentencing event. Convictions under § 59.1-96 and misdemeanor convictions for the sale, distribution, manufacture, or possession with intent to distribute imitation Schedule III, IV or V drugs are not covered but may augment the guidelines recommendation if a covered offense is the most serious at conviction.

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

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.

months, and 11% were sentenced to a state-responsible (prison) term for accompanying felony charges. There were no cases found in the FY2001 and FY2002 LIDS data for violations under § 59.1-96 for unlawfully using names on packages or containers.

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.

Impact of Proposed Legislation:

The proposed legislation expands the definition of an “imitation controlled substance” to include counterfeit controlled substances. The proposal may have an impact on the bed space needs of the Commonwealth, but the impact cannot be quantified. 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. No adjustment to the guidelines would be necessary under the proposal.

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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