



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1178

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

Date Submitted: 2/3/2005

LD #: 05-5515820

Topic: Counterfeiting prescription drugs

Proposed Change:

The proposed legislation amends § 54.1-3458 to increase the penalty for knowingly causing a drug to be a counterfeit drug and for knowingly selling, manufacturing, dispensing, or facilitating in the distribution of a counterfeit drug (defined in § 54.1-3457(A)) from a Class 2 misdemeanor to a Class 5 felony. The proposal also deletes the current definition of “counterfeit controlled substance” from § 18.2-247(E) and amends § 54.1-3457 to add a definition of “counterfeit drug”.

The 2004 General Assembly amended § 18.2-247 to define counterfeit drugs and to include counterfeit drugs as an imitation controlled substance for the purposes of punishment under Article 1 (Drugs) of Chapter 7 (Crimes Involving Health and Safety) of Title 18.2. Under § 18.2-248, the manufacture, sale, gift, distribution or possession with intent to distribute an imitation Schedule I or II drug is punishable as a Class 6 felony, while the same act involving a Schedule III, IV or V drug (except anabolic steroids) is punishable as a Class 1 misdemeanor.

Analysis:

Based on the fiscal year (FY) 2003 and 2004 Local Inmate Data System (LIDS), one offender held pre- or post-trial in jail was convicted of a Class 2 misdemeanor for adulterating or misbranding drugs under the § 54.1-3457. This offender was sentenced to eight days in jail. It is unknown if this case specifically involved an offender who created a counterfeit drug, or sold or dispensed a counterfeit drug, under subsection B15 of this statute. LIDS data do not capture offenders who commit misdemeanor violations but are never held in a local jail.

Data involving the sale or distribution of counterfeit drugs under § 18.2-248 are not available as adding counterfeit drugs to the definition of imitation drugs was made during the 2004 General Assembly.

Impact of Proposed Legislation:

As the proposed legislation raises the penalty for an existing crime from a misdemeanor to a felony, the proposal may increase state-responsible (prison) and local-responsible (jail) bed space needs of the Commonwealth. While the number of incidents affected by the proposal and the potential increase in felony prosecutions cannot be estimated with available data, the impact

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.

is likely to be small, as data indicate only one offender held in jail was convicted for any of the crimes defined in § 54.1-3457 during a recent two-year period.

Convictions under § 54.1-3457 are not covered by Virginia's sentencing guidelines as the primary (or most serious) offense but may augment the guidelines recommendation if a covered offense is the most serious at conviction. No adjustment to the sentencing guidelines would be necessary under the proposal.

The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to increase Juvenile Correctional Center (JCC) bed space needs.

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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