



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1464

(Patron – Amundson)

LD #: 06-5706212

Date: 1/17/2006

Topic: Counterfeiting prescription drugs

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined, likely to be small
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

Summary of Proposed Legislation:

The proposed legislation amends §§ 18.2-247, 54.1-3457, and 54.1-3458 relating to the counterfeiting of prescription drugs. The proposal modifies subsection B of § 18.2-247 so that the definition of an “imitation controlled substance” no longer includes a counterfeit controlled substance. The description of a “counterfeit controlled substance” is eliminated and replaced with a newly defined “counterfeit drug” in subsection A of the amended § 54.1-3457. A “counterfeit drug” means a substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance, and that purports to be a prescription drug as defined in 54.1-3401.

The proposal further amends § 54.1-3457 to revise the description of prohibited acts involving the counterfeiting of prescription drugs. It specifically prohibits acts designed to produce counterfeit drugs (subdivision B 13) and the manufacturing, selling, distributing, dispensing, facilitating the distribution or dispensing, or holding for distribution or dispensing any counterfeit drug (subdivision B 14).

Currently under § 54.1-3458, any person who violates any of the provisions of § 54.1-3457 shall be guilty of a Class 2 misdemeanor. The proposal amends § 54.1-3458 so that any person who knowingly and willfully violates subdivision B 13 or B 14 of the amended § 54.1-3457 shall be guilty of a Class 5 felony.

Analysis:

According to (FY) 2003 and FY2004 Local Inmate Data System (LIDS) data, one offender was convicted of violating the provisions of § 54.1-3457 with respect to the adulteration or misbranding of drugs or cosmetics. This individual was sentenced to eight days in jail.

Impact of Proposed Legislation:

Adult state correctional facilities. By increasing the penalty for certain violations of § 54.1-3457 from a Class 2 misdemeanor to a Class 5 felony, the proposal may increase the state-responsible (prison) bed space needs. Existing databases do not provide sufficient information to estimate the number of instances involving the counterfeiting of prescription drugs. However, given the small number of convictions under the current § 54.1-3457, the correctional bed space impact is expected to be small.

Adult local correctional facilities. The proposal may have an impact on the local-responsible (jail) bed space needs, but it cannot be determined.

Adult community corrections programs. The proposed legislation may increase the adult community corrections programs needs, but the impact cannot be determined.

Virginia's sentencing guidelines. The new felony crime defined by the proposal would not be covered by Virginia's sentencing guidelines as the primary (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.

Juvenile correctional centers. The Department of Juvenile Justice (DJJ) reports that the proposed legislation is not expected to have an impact on juvenile correction centers (JCC).

Juvenile detention facilities. According to the Department of Juvenile Justice, the proposed legislation is not expected to have an impact on juvenile detention facilities.

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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