



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 405 (Patron – Puckett)

LD#: 08-4633300

Date: 1/15/2008

Topic: Prescription drugs

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$2,186,766 (80 beds)
- **Local Adult Correctional Facilities:**
At least \$136,221 (13 beds)
- **Adult Community Corrections Programs:**
Cannot be determined

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

Summary of Proposed Legislation:

The proposal amends §§ 18.2-258.1, 54.1-3310, 54.1-3408, and 54.1-3434.1 relating to offenses involving prescription drugs. The proposed § 18.2-258.1 would increase the penalty for several types of prescription fraud from a Class 6 felony to a Class 5 felony, and to a Class 4 felony for a second or subsequent offense.

This section was most recently amended in 1997 to include “first offender” provisions. These provisions specify that any person not previously convicted of an offense related to narcotic or hallucinogenic drugs or marijuana may be placed on probation subject to terms and conditions; upon fulfillment of the terms and conditions of probation, the court finds the offender guilty of a Class 1 misdemeanor in lieu of the original felony.

Other parts of the proposal would create new crimes. The proposed § 54.1-3310 would make it a Class 5 felony for any person to practice pharmacy without a license, or to knowingly violate the provisions of Chapter 33 of Title 54.1 of the *Code of Virginia* or any provisions of the Drug Control Act (§ 54.1-3400 et seq.) relevant to pharmacists; a second or subsequent offense would be a Class 4 felony. Any licensed pharmacist who inadvertently allows his license to lapse for a period of less than 30 days, however, would not be subject to this penalty. Currently, the penalty for practicing pharmacy without a license is a non-criminal penalty imposed by the Board of Pharmacy (§ 54.1-3316).

The current § 54.1-3408 describes the lawful and professional use of controlled substances by various health care practitioners (physicians, dentists, nurse practitioners, and their associates); no criminal penalties are described for failure to adhere to the contents of this statute. This section has been amended frequently by the General Assembly (most recently, in 2005, 2006, and 2007) to specify conditions under which certain practitioner groups may administer controlled substances. Under the proposal, any practitioner found guilty of violating this section with respect to a Schedule I or II controlled substance is subject to imprisonment for 5 to 40 years and a fine of not more than \$500,000; for a second or subsequent conviction, the period of imprisonment is from 5 years to life. Any

practitioner who violates this section with respect to a Schedule III, IV, or V controlled substance is guilty of a Class 5 felony.

The current § 54.1-3434.1 describes registration and reporting requirements for nonresident pharmacies (pharmacies located outside Virginia that ship prescription drugs into the Commonwealth), especially those doing business over the Internet. Currently, nonresident pharmacies must register with the Board of Pharmacy. Under the proposed § 54.1-3434.1, a nonresident pharmacy shall have a pharmacist in charge who is licensed by the Board to practice in Virginia, and who shall be responsible for the pharmacy's compliance. A nonresident pharmacy that dispenses more than 25% of its total prescription volume as a result of orders received over the Internet must receive and display a seal of approval from the National Association of Boards of Pharmacy certifying that it is a Verified Internet Pharmacy Practice Site, or a similar seal certifying approval by the Board. A nonresident pharmacy will have to certify the percentage of its annual business conducted via the Internet and submit such supporting documentation as requested by the Board along with its application for a permit or permit renewal. The Board may, in its discretion, waive the requirements of this section for a nonresident pharmacy that only does business within the Commonwealth in limited transactions.

Analysis:

According to fiscal year (FY) 2006 and FY2007 Pre/Post-Sentence Investigation (PSI) data, 357 offenders were convicted of prescription fraud under § 18.2-258.1 as their primary (most serious) offense at sentencing. The most frequently observed offense was obtaining drugs by forgery or fraud (§ 18.2-258.1A), accounting for 89% of the cases. Only 8% of these offenders were given a state-responsible (prison) term, with a median sentence of 1.5 years; 12% were given a local-responsible (jail) term with a median sentence of 3.0 months, and the remaining 80% received probation with no active incarceration term to serve (including those placed under first-offender provisions). Uttering a false or forged prescription accounted for another 9% of the prescription fraud cases. Only 9% of these offenders received a prison term (median sentence 1.2 years); 18% received jail terms (median sentence of 3 months) and 73% were sentenced to probation (including those placed under first-offender provisions).

In addition, three offenders were convicted of assuming the title of a physician or pharmacist to obtain drugs; all three were sentenced to probation. One offender was sentenced to three months in jail for affixing a false or forged label to a receptacle containing a controlled substance.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal will establish new felony crimes under the proposed §§ 54.1-3310 and 54.1-3408. While this aspect of the proposal may increase state-responsible (prison) bed space needs, the number of additional felony convictions that may result cannot be estimated. Therefore, the impact of this portion of the proposal cannot be quantified. The proposal also increases the penalties for existing felonies under § 18.2-258.1. The impact of this second aspect of the proposal can be estimated. This impact is projected to be 80 beds by 2014. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$2,186,766.

Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY09	FY10	FY11	FY12	FY13	FY14
15	49	66	73	78	80

Local adult correctional facilities. The proposed changes to § 18.2-258.1 will also increase the demand for local-responsible (jail) beds. The impact is estimated to be an increase of 13 beds by FY2014 (state costs: \$136,221; local costs: \$136,641).

Estimated Six-Year Impact in Local-Responsible (Jail) Beds

FY09	FY10	FY11	FY12	FY13	FY14
8	13	14	14	14	13

Adult community corrections resources. Because the proposal may result in additional felony offenders on community supervision, the proposal may increase the need for state community corrections resources. However, the proposal will also delay the need for services for some felony offenders affected by the proposal, as they will be serving longer incarceration terms than those currently served by offenders convicted of prescription fraud. The net impact on state community corrections programs cannot be quantified.

Virginia's sentencing guidelines. Felony convictions for prescription fraud under § 18.2-258.1 are covered by the sentencing guidelines as the primary (most serious) offense. Convictions for the new felony offenses would not be covered; however, they could augment the sentencing recommendation if the primary offense at conviction is a covered offense. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$2,186,766 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.

Assumptions underlying the analysis include:**General Assumptions**

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety's Committee on Inmate Forecasting in 2007.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety's Committee on Inmate Forecasting and approved in July 2007.
3. Cost per prison bed was assumed to be \$27,452 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. **Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.**
4. Cost per jail bed was based on The Compensation Board's FY2006 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.42 per day or \$10,381 per year. The local cost was calculated by using the daily expenditure cost of \$61.48 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$28.51 per day or \$10,413 per year. **Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.** Note: The Compensation Board does not include data from jails that were not in operation for the entire fiscal year. Middle River Regional Jail was excluded because it opened during FY2006, while Augusta and Tazewell Counties were excluded because their jails were closed during the same time period; Augusta County now participates in the new Middle River Regional Jail and Tazewell County now participates in the Southwest Virginia Regional Jail.

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2008, is phased in to account for case processing time.
2. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the

average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2006. For drug crimes other than those involving possession or distribution of marijuana or Schedule I or II drugs, this rate was 11.68%.

3. To gauge the impact of the proposed penalty ranges, offenders convicted of first-offense prescription fraud under § 18.2-258.1 were assumed to receive sentences similar to offenders currently convicted of possession of a Schedule I or II controlled substance (currently a Class 5 felony). Because there is only one Class 4 felony drug crime defined in the *Code of Virginia* and there has only been one conviction recorded for this offense, offenders convicted of a second or subsequent offense were assumed to receive sentences similar to offenders currently convicted of forging a public record (a Class 4 felony).

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