



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1165 (Patron – Phillips)

LD#: 10101226

Date: 1/21/2010

Topic: Tramadol; add to Schedule IV

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 781 of the 2009 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposed legislation amends § 54.1-3452 of the *Code* to add tramadol (trade names: Ultram®, Ultracet®) to Schedule IV of the Virginia Drug Control Act.

Tramadol is a centrally-acting analgesic used for the treatment of moderate to moderately severe pain in adults. According to the IMS Health National Prescription Audit Plus™, retailers dispensed 26.6 million tramadol prescriptions in 2008. Although the United States Department of Health and Human Services has not recommended the scheduling of this substance in the federal Controlled Substances Act, a requirement necessary for the Drug Enforcement Administration (DEA) to place a substance under control, the Food and Drug Administration (FDA) has required the manufacturer of Ultram® to inform physicians about recent abuse data. In addition, Arkansas and Kentucky have designated tramadol as a Schedule IV drug under state law.¹ Tramadol has also been used in the illicit production of OxyContin® mimic tablets recently seized in Virginia and New York.²

Possession of a Schedule IV controlled substance is a Class 2 misdemeanor under § 18.2-250(A,b1). This offense is punishable by a term of incarceration of up to six months in jail. Distribution of a Schedule IV controlled substance as an accommodation is a Class 1 misdemeanor punishable by up to twelve months in jail under § 18.2-248(E3). Manufacturing, selling, giving, distributing, or possessing with intent to distribute a Schedule IV controlled substance in violation of § 18.2-248(E2) is a Class 6 felony punishable by imprisonment from one to five years.

Analysis:

¹ Drugs and Chemicals of Concern; Tramadol. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice. Available at http://www.deadiversion.usdoj.gov/drugs_concern/tramadol.htm.

² *Microgram Bulletin*, Volume 42, Nos. 2 and 9 (February and September 2009). Drug Enforcement Administration, U. S. Department of Justice.

According to General District Court Automated Information System (CAIS) data for fiscal years 2008 and 2009, there were 263 convictions for misdemeanor possession of a Schedule IV controlled substance. This offense was the primary, or most serious, offense in 170 cases. The majority of offenders (74%) received no active term of incarceration. The remaining offenders (26%) were sentenced to local-responsible (jail) terms with a median sentence of approximately one month. In addition, one offender was convicted of two counts of distribution of a Schedule IV controlled substance as an accommodation as his primary offense and was sentenced to twelve months in jail.

According to CAIS Circuit Court data for the same time period, there were 154 felony convictions for manufacturing, selling, giving, distributing, or possessing with intent to distribute a Schedule IV controlled substance. This offense was the primary, or most serious, offense in 46 cases. Twenty-two offenders (48%) were sentenced to probation with no active term of incarceration. Sixteen offenders (35%) were sentenced to local-responsible (jail) terms with a median sentence of three months; the remaining offenders (17%) received state-responsible (prison) terms with a median sentence of 1.4 years.

Impact of Proposed Legislation:

State adult correctional facilities. The proposed legislation expands the list of Schedule IV controlled substances by adding tramadol. In this way, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The number of additional convictions that may result from the proposal cannot be estimated. Therefore, the impact of the proposal cannot be quantified.

Local adult correctional facilities. The proposal may also increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be determined.

Adult community corrections programs. The proposal's impact on the need for adult community corrections resources cannot be determined.

Virginia's sentencing guidelines. Violations involving Schedule IV controlled substances are not covered by the guidelines as the primary (or most serious) offense; however, convictions may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. 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. According to the Department of Juvenile Justice (DJJ), 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 cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 781 of the 2009 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.