



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1427 (Patron – Lingamfelter)

LD#: 15100485

Date: 10/16/2014

Topic: Death caused by controlled substance

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:**
Cannot be determined
- **Juvenile Detention Facilities:**
Cannot be determined

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the 2014 Acts of Assembly, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal adds § 18.2-33.1, relating to individuals who sell, give, or distribute a Schedule I or II controlled substance to another person. Under the proposal, any person who unlawfully sells, etc., a Schedule I or II drug to another would be guilty of second degree murder if the use of the controlled substance causes the death of the recipient. Under § 18.2-32, second degree murder is punishable by up to forty years imprisonment in a state correctional facility.

The proposal may have been precipitated by a recent Virginia Court of Appeals decision (*Woodard v. Commonwealth*, 2013) relating to felony murder convictions in cases involving drug overdoses. In 1984, the Supreme Court of Virginia held that when “death results from ingestion of a controlled substance, classified in law as dangerous to human life, the homicide constitutes murder of the second degree within the intentment of Code § 18.2-33 if the substance had been distributed to the decedent in violation of the felony statutes of this Commonwealth.” *Heacock v. Commonwealth*, 228 Va. 397, 405, 323 S.E.2d 90, 95 (1984). The Court of Appeals of Virginia upheld another felony murder conviction under § 18.2-33 for a methadone overdose death in 2012 (*Hylton v. Commonwealth*, 60 Va. App. 50, 723 S.E.2d 628 (2012)). However, in 2013, the same court reversed a conviction of felony murder related to the distribution and use of ecstasy and ruled that the “time and place elements of the felony-murder rule were not established” in that case (*Woodard v. Commonwealth*, 61 Va. App. 567, 739 S.E.2d 220 (2013)). In *Woodard*, the Court ruled that a conviction under § 18.2-33 for a death caused by a controlled substance requires that the killing be so closely related in time, place, and causal connection as to be part of the same felonious criminal enterprise. The proposal would allow individuals who sell, etc., a controlled substance to be convicted of second degree murder if the recipient’s use of a Schedule I or II controlled substance was the proximate cause of the death, regardless of the timing or location of the death.

Analysis:

According to the Office of the Chief Medical Examiner,¹ 805 individuals died in 2012 as the result of drugs or poisons in the Commonwealth. The causes of death for these individuals included prescription drugs, over-the-counter drugs, illegal (street) drugs, alcohol, inhalants, and other poisons. According to the Virginia Medical Examiner Data System, approximately 76% of the drug or poison deaths in 2012 were attributed to Schedule I or II controlled substances. Based on preliminary data provided by the Virginia Department of Health, Schedule I or II drugs caused 82% of the 912 drug or poison deaths in 2013.²

Existing data sources do not contain sufficient detail to determine the number of Schedule I or II overdose deaths that could be linked to the individual who distributed the drug or whether the controlled substance was distributed illegally. However, individuals convicted under the proposed § 18.2-33.1 may be sentenced similarly to offenders sentenced under existing provisions for felony murder under § 18.2-33. According to the Sentencing Guidelines Database for fiscal year (FY) 2013 and FY2014, 24 individuals were convicted of felony murder under § 18.2-33. The murder was the primary, or most serious, offense in all cases. All of the offenders were sentenced to a state-responsible (prison) term, for which the median sentence length was 22 years and 3 months. Of the 24 cases, two offenders were sentenced for distribution of a controlled substance alongside the murder conviction. One included a conviction for distribution of marijuana ½ ounce to less than 5 pounds; this offender was sentenced to 16 years in prison. The other offender, who was sentenced to 25 years in prison, was convicted of distribution of a Schedule I/II drug. However, data do not indicate if the deaths were associated with the drug offenses.

Impact of Proposed Legislation:

State adult correctional facilities. By adding a new felony offense to the Code, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing data do not provide sufficient detail to estimate the number of new felony convictions, or potentially longer sentences, that could result from enactment of the proposal. Therefore, the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal may increase the local-responsible (jail) bed space needs, but the magnitude cannot be determined.

Adult community corrections programs. The proposal may increase the need for adult community corrections programs, but the number cannot be quantified.

Virginia's sentencing guidelines. As a new felony offense, convictions under the proposed § 18.2-33.1 would not be covered by the sentencing guidelines as the primary, or most serious, offense in a case. Such a conviction, however, could 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.

¹ Virginia Department of Health, *Office of the Chief Medical Examiner's Annual Report, 2012*. Available at <http://www.vdh.state.va.us/medExam/documents/pdf/COMPLETED-Annual%20Report%202012.pdf> (accessed October 8, 2014).

² Virginia Medical Examiner Data System, Office of the Chief Medical Examiner, Virginia Department of Health. The data identifies the following drugs as Schedule I/II drugs: Amphetamine, Cocaine, Codeine, Fentanyl, Gabapentin, Heroin, Hydrocodone, Hydromorphone, Levorphanol, Meperidine, Meth, Methadone, Morphine (not with the presence of heroin), Oxycodone, Oxymorphone, Secobarbital, Tapentadol, THC, and Tramadol. Data maintained by the Office of the Chief Medical Examiner is by drug name and not Schedule. Data used for this analysis may exclude other drugs that are not easily identified as Schedule I/II.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal may increase juvenile correctional center (JCC) bed space needs, but the magnitude cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal may increase the bed space needs of juvenile detention facilities, but the magnitude cannot be quantified.

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 2 of the 2014 Acts of Assembly, Special Session I, 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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