

## Fiscal Impact Review 2015 General Assembly Session

**Bill number:** HB 1427

**Review Requested By:** Chairman Albo

### JLARC Staff Fiscal Estimates

HB 1427 provides that a person who unlawfully sells, gives, or distributes a Schedule I or II controlled substance to another person resulting in the death of the other person is guilty of second degree murder. HB 1427 would amend the law for such crimes to be consistent with the application of the law prior to a 2013 Virginia Court of Appeals ruling. The cost to the Department of Corrections for such convictions is, therefore, expected to be similar to the cost prior to the 2013 ruling. However, convictions that have occurred since the 2013 ruling have likely been less costly because they probably did not result in a second degree murder conviction.

*An explanation of the JLARC staff review is included on the pages that follow.*

**Authorized for release:**



**Hal E. Greer, Director**

**Bill summary:** HB 1427 provides that a person who unlawfully sells, gives, or distributes a Schedule I or II controlled substance to another person is guilty of second degree murder if (i) such other person's death results from his use of the controlled substance and (ii) the controlled substance is the proximate cause of his death.

**Discussion of fiscal implications:**

HB 1427 would amend the law for a person found by a court to have distributed a controlled substance to another person resulting in the death of that person to be consistent with the application of the law prior to 2013. According to the Virginia Criminal Sentencing Commission (VCSC), prior to 2013 such defendants could be convicted of second degree murder under the felony homicide law (§18.2-33) and established case law. In a 2013 Virginia Court of Appeals decision, the court ruled that a second degree murder conviction under §18.2-33 could only occur if the death was closely related in time, place, and causal connection to the distribution of the controlled substance. This ruling made a conviction under §18.2-33 for such offenses much less likely.

Staff at the VCSC and the Commonwealth's Attorneys' Services Council indicate that since 2013, defendants in similar cases have likely been prosecuted and convicted for selling, giving, and distributing a controlled substance (§18.2-248). According to the Sentencing Guidelines Database, in FY 2013 and FY 2014 the median prison sentence for distribution of a controlled substance (§18.2-248) was 2 years and six months compared to the median sentence for felony homicide (§18.2-33) of 22 years and three months.

The general fund cost to the Department of Corrections (DOC) for second degree murder convictions resulting from HB 1427 is not expected to be higher than DOC costs prior to the 2013 court ruling. However, it is likely that convictions occurring since the 2013 ruling have resulted in a lower DOC cost due to the lower median sentence for distributing a controlled substance. (According to recent estimates from the Department of Planning and Budget (DPB), the annual cost of a state prison bed is \$30,397.) Therefore, while the DOC cost will not be greater than the cost prior to the 2013 court ruling, it will be higher than the cost under current law. Legislative budget staff indicate that DOC's appropriation level was not adjusted downward to reflect the 2013 ruling.

The VCSC FIS indicates that data is not available to determine the number of deaths from a controlled substance that could be linked to distribution of the substance. Therefore, VSCS assigned a minimal fiscal impact of \$50,000 as required by §30-19.1:4.

**Budget amendment necessary?** §30-19.1:4 requires that an appropriation must be made equal to the cost estimated by VCSC for bills that impact state correctional facilities. However, current DOC appropriations reflect the application of the law prior to the 2013 ruling.

**Agencies affected:** Department of Corrections

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