



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1035

Amendment in the Nature of a Substitute (Patron Prior to Substitute – Wexton)

LD#: 15104277

Date: 1/26/2015

Topic: Felony homicide

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)**

** Provided by the Department of Juvenile Justice

* 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 amends § 18.2-33 regarding the definition of felony homicide. Currently, the killing of one accidentally during the commission of a felonious act (other than those specified in §§ 18.2-31 and 18.2-32) is murder in the second degree and is punishable by imprisonment from five to forty years. Under the proposal, any person who distributes a Schedule I or II controlled substance to another in violation of § 18.2-248 is guilty of second degree murder if the recipient dies within 48 hours as the direct, proximate, and unintended result of ingesting such substance. However, this provision would not apply if the substance was provided as an accommodation and certain other conditions are met.

The proposal is 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 offenders who commit a felony violation of § 18.2-248 to be

convicted of felony homicide if the recipient's use of the drug resulted in death, regardless of the 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 overdose deaths that could be linked to the individual who distributed the drug or whether the controlled substance was distributed illegally. However, individuals convicted of felony homicide under the proposed § 18.2-33 may be sentenced similarly to offenders sentenced under existing provisions. 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 expanding the applicability of an existing felony offense, 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 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 potential impact cannot be quantified.

Virginia's sentencing guidelines. Felony homicide convictions under § 18.2-33 are covered by the sentencing guidelines when this offense is the primary, or most serious, offense in a case. 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, the proposal is not expected to increase juvenile correctional center 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 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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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