



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 284

(Patron – Collins)

LD#: 16101274

Date: 12/29/2015

Topic: Manufacturing, selling, etc., Schedule I/II drug resulting in overdose

#### 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\*\*

\*\* 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 665 of the 2015 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

#### Summary of Proposed Legislation:

The proposal adds § 18.2-248.05, dealing with the manufacture, etc., of a Schedule I or II controlled substance, to the *Code*. Under the proposal, a person would be guilty of a Class 5 felony if he or she manufactures, etc., a Schedule I or II controlled substance and the use of the controlled substance results in another person's overdose. An affirmative defense to prosecution may be invoked in specified circumstances.

#### Analysis:

According to the Office of the Chief Medical Examiner, 992 individuals died in 2014 as the result of drugs in the Commonwealth, with preliminary estimates for 2015 suggesting a similar number of fatal drug overdoses. 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,<sup>1</sup> approximately 81% of the drug deaths in 2014 were attributed to Schedule I or II controlled substances. Figures concerning the number of non-fatal overdoses within the Commonwealth are unavailable at this time.

<sup>1</sup> 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.

According to Sentencing Guidelines data for fiscal year (FY) 2014 and FY2015 5,056 offenders were convicted of distributing, etc., a Schedule I or II drug in violation of 18.2-248(C). The distribution offense was the primary, or most serious, offense in 4,991 cases. Of these, 11% did not receive an active term of incarceration to serve, while slightly less than one-quarter (24%) were sentenced to a local-responsible (jail) term, with a median sentence of eight months. The majority (65%) received a state-responsible (prison) term, for which the median sentence was 2.5 years. Existing data sources do not provide sufficient information to determine the number of cases in which an offender distributed, etc., a Schedule I or II drug and the use of the drug resulted in the overdose of another.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Because the proposal would create a new Class 5 felony offense, it may increase the state-responsible (prison) bed space needs of the Commonwealth. However, the number of additional felony convictions, or potentially longer sentences, that may result cannot be estimated. Therefore, the magnitude of 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.** As a new felony, convictions under the proposed statute would not be covered by the sentencing guidelines when this crime is the primary (most serious) offense. A conviction for such an offense, 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.

**Juvenile correctional centers.** According to the Department of Juvenile justice, the impact of the proposal on juvenile correctional center bed space needs cannot be determined.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

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**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 665 of the 2015 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

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