



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 2470 (Patron – Jones)

LD#: 17104071

Date: 1/17/2017

Topic: Schedule II and Schedule V drugs

#### Fiscal Impact Summary:

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

- **Juvenile Direct Care:**  
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 780 of the 2016 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

#### Summary of Proposed Legislation:

The proposal amends § 54.1-3448 and 54.1-3454 of the *Code* to add two drugs to the lists of controlled substances under the Virginia Drug Control Act (Chapter 34 of Title 54.1). The proposal would expand the list of Schedule II controlled substances to include thiafentanil, which is a potent opioid and a synthetic analogue of fentanyl. On August 26, 2016, the Drug Enforcement Agency (DEA) formally added thiafentanil as a Schedule II controlled substance under the federal Controlled Substances Act (CSA).<sup>1</sup> While the Virginia Board of Pharmacy has the authority to classify substances as Schedule I or Schedule II via an expedited regulatory process, it has not added thiafentanil in this manner.

The proposal also adds brivaracetam (also referred to as BRV, UCB-34714 and Briviact) to Schedule V of the Virginia Drug Control Act. The DEA added this seizure medicine to Schedule V of the federal CSA on May 12, 2016.<sup>2</sup>

Possession of a Schedule I or II controlled substance is a Class 5 felony punishable by imprisonment from one to ten years under § 18.2-250(A,a). Numerous felony offenses regarding manufacturing, selling, giving, distributing, or possessing with intent to distribute a Schedule I or II controlled substance are covered under § 18.2-248. Statutory maximums for these crimes range from ten years for sale of a Schedule I or II drug as an accommodation (§ 18.2-248(D)) to life in prison for crimes involving large

<sup>1</sup> Placement of Thiafentanil Into Schedule II. Office of Diversion Control, DEA, U. S. Department of Justice. Available at [https://www.deadiversion.usdoj.gov/fed\\_regs/rules/2016/fr0826.htm](https://www.deadiversion.usdoj.gov/fed_regs/rules/2016/fr0826.htm).

<sup>2</sup> Placement of Brivaracetam Into Schedule V. Office of Diversion Control, DEA, U. S. Department of Justice. Available at [https://www.deadiversion.usdoj.gov/fed\\_regs/rules/2016/fr0512.htm](https://www.deadiversion.usdoj.gov/fed_regs/rules/2016/fr0512.htm).

quantities of drugs or subsequent convictions. Mandatory minimum penalties often apply to these crimes as well. Trafficking of Schedule I or II drugs into the Commonwealth is prohibited under § 18.2-248.01.

Possession of a Schedule V controlled substance is a Class 3 misdemeanor punishable by fine only (§ 18.2-250(A,b2)); however, the manufacture, sale or distribution of a Schedule V drug or the distribution of a Schedule V drug as an accommodation are Class 1 misdemeanors (§ 18.2-248(F)).

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**Analysis:**

According to fiscal year (FY) 2015 and FY2016 Sentencing Guideline data, there were 14,540 felony sentencing events involving Schedule I or II drug crimes. In these cases, the Schedule I/II drug crime was the primary (or most serious) offense. Approximately 62% of these convictions involved simple possession, while the remaining 38% were related to the sale or distribution of such a drug (§ 18.2-248(C)). Approximately half (48.3%) of the offenders convicted of simple possession were sentenced to a term of incarceration: 37.7% were given a local-responsible (jail) term and 10.6% received a state-responsible (prison) term. For possession offenders committed to prison, the median sentence was 1.5 years. Offenders convicted of sales-related crimes were much more likely to be incarcerated. While 23.6% were sentenced to serve time in jail, 63.7% received a prison term. For offenders committed to prison for a sales-related offense, the median sentence was 2.5 years.

According to FY2015 and FY2016 General District Court Case Management System (CMS) data, one offender was convicted of a Class 1 misdemeanor for the sale or distribution of a Schedule V drug. This offender did not receive an active term of incarceration to serve after sentencing. One offender was convicted of the sale or distribution of a Schedule V drug as an accommodation as the primary offense in a sentencing event; this offender was sentenced to serve one month in jail. During this two-year period, 12 offenders were convicted of a Class 3 misdemeanor under § 18.2-250(A,b2) for possession of a Schedule V drug.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By expanding the list of prohibited Schedule II drugs, the proposal expands the applicability of several existing felony offenses. In this way, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The number of additional felony convictions that may result from the proposal cannot be estimated; therefore, the magnitude of the impact cannot be determined.

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

**Adult community corrections programs.** Because the proposal could result in additional felony convictions and subsequent supervision requirements, the proposal may affect adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

**Virginia's sentencing guidelines.** Primary (most serious) offense violations involving simple possession or the manufacture, sale, distribution, or possession with intent to distribute a Schedule I or II controlled substance are covered under the sentencing guidelines. Violations involving Schedule V controlled substances are not covered; however, these 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 direct care.** According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) 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 780 of the 2016 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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