

Department of Planning and Budget 2018 Fiscal Impact Statement

1. **Bill Number:** HB1469 S1

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. **Patron:** Hugo

3. **Committee:** Courts of Justice

4. **Title:** Felony homicide; certain drug offenses; penalty.

5. **Summary:** Establishes that a person is guilty of felony homicide if the underlying felonious act that resulted in another person's death involved the manufacture, sale, gift, or distribution of a Schedule I or II controlled substance and (i) the death resulted from the use of the controlled substance and (ii) the controlled substance was the proximate cause of death. This bill serves to overrule the Court of Appeals of Virginia decision in *Woodard v. Commonwealth* (2013), which determined that conviction for a death caused by a controlled substance requires the death to be so closely related in time, place and causal connection as to be part of the same felonious enterprise.

The substitute bill reduces the penalty for this offense to a Class 5 felony if certain conditions are met. The offender would have to prove that he gave or distributed a Schedule I or II controlled substance only as an accommodation to another individual, who is not an inmate in a community correctional facility, local correctional facility, or state correctional facility, or in the custody of an employee thereof, and not with intent to profit from any consideration received or expected nor to induce the recipient to use or become addicted to or dependent upon the controlled substance. An affirmative defense to prosecution is allowed if (i) such person, in good faith, seeks or obtains emergency medical attention for the person experiencing an overdose by immediately reporting the overdose to a firefighter, emergency medical services personnel, a law-enforcement officer, or an emergency 911 system, (ii) such person remains at the scene of the overdose until a law-enforcement officer responds to the report of an overdose or, if transported by a firefighter or emergency medical services personnel for emergency medical attention prior to the arrival of a law-enforcement officer, remains at the location to which he was transported until a law-enforcement officer responds to such location, (iii) such person identifies himself to the law-enforcement officer who responds to the report of the overdose; and (iv) if requested by a law-enforcement officer, such person substantially cooperates in any investigation of any criminal offense reasonably related to the controlled substance, alcohol, or combination of such substances that resulted in the overdose.

6. **Budget Amendment Necessary:** Yes. Item 391.

7. **Fiscal Impact Estimates:** Preliminary. See Item 8 below.

Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2019	\$50,000	General
2020	\$0	
2021	\$0	
2022	\$0	
2023	\$0	
2024	\$0	
2025	\$0	

- 8. Fiscal Implications:** Felony homicide constitutes second-degree murder, which is punishable by of no less than five but not more than 40 years' imprisonment. For someone convicted of a Class 5 felony under the provisions of this bill, a judge has the option of sentencing him to up to one year in jail, or one to ten years in prison. Therefore, this proposal could result in an increase in the number of persons sentenced to jail or prison.

There is not enough information available to reliably estimate how many additional inmates in jail could result from this proposal. Any increase in jail population will increase costs to the state. The Commonwealth presently pays the localities \$4.00 a day for each misdemeanor or otherwise local responsible prisoner held in a jail and \$12.00 a day for each state responsible inmate. It also funds a considerable portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2017), the estimated total state support for local jails averaged \$34.58 per inmate, per day in FY 2016.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 836 of the 2017 Acts of Assembly requires that a minimum impact of \$50,000 be assigned to the bill.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Corrections, Local and Regional jails.

10. Technical Amendment Necessary: None

11. Other Comments: None