

## Department of Planning and Budget 2023 Fiscal Impact Statement

**1. Bill Number:** HB1455H1

**House of Origin**    ☐ Introduced    ☒ Substitute    ☐ Engrossed

**Second House**    ☐ In Committee    ☐ Substitute    ☐ Enrolled

**2. Patron:** Anderson

**3. Committee:** Committee Referral Pending

**4. Title:** Selling, giving, or distributing a substance containing fentanyl; penalties.

**5. Summary:** This bill establishes criminal penalties for anyone who sells, gives, or distributes a substance he knows contains two milligrams or more of any mixture or substance containing a detectable amount of fentanyl, including its isomers, esters, ethers, salts, and salts of isomers, to another person without such person's knowledge that it contains fentanyl. Anyone who violates the proposed section is guilty of attempted first-degree murder by poison. If such sale, gift, or distribution results in the death of the other person from the use of the substance containing fentanyl, then the person who sold, gave, or distributed the substance is guilty of first-degree murder by poison. The bill provides that violation of the proposed section constitutes a separate and distinct offense and that the provisions of the proposed section do not preclude prosecution under any other statute.

**6. Budget Amendment Necessary:** Yes. Item 404.

**7. Fiscal Impact Estimates:** Preliminary (see Item 8).

**8. Fiscal Implications:** Currently, under §18.2-248 an individual who manufactures, sells, distributes, or possesses with intent to distribute a Schedule I or II drug, such as fentanyl, is guilty of a felony punishable by imprisonment of 5 to 40 years. Under §18.2-32, completed first-degree murder is a Class 2 felony punishable by 20 years to life. Pursuant to § 18.2-26, attempted first-degree felony murder is classified as a Class 4 felony, punishable by imprisonment of 2 to 10 years.

By establishing new criminal penalties associated with certain quantities of fentanyl, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Since the number of individuals who may be subject to such penalties cannot be determined with available data, the magnitude of the impact on prison beds cannot be quantified.

Therefore, due to the lack of data, and pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

The Department of State Police (VSP) does not anticipate any material fiscal impact as a result of this proposal.

**9. Specific Agency or Political Subdivisions Affected:** Department of Correction (DOC), local and regional jails, Courts, Commonwealth's Attorneys, Public Defenders.

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** None.