

Department of Planning and Budget 2023 Fiscal Impact Statement

1. Bill Number: HB1682H1

House of Origin ☐ Introduced ☒ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Wyatt

3. Committee: Courts of Justice

4. Title: Weapon of terrorism; definition; penalty.

5. Summary: Includes any mixture or substance containing a detectable amount of fentanyl, including its isomers, esters, ethers, salts, and salts of isomers, as described in Schedule II of the Drug Control Act, except as authorized in the Drug Control Act, in the definition in the Code of a “weapon of terrorism.” The bill also provides that any person who knowingly and intentionally manufactures or knowingly and intentionally distributes a weapon of terrorism when such person knows that it is, or contains, any mixture or substance containing a detectable amount of fentanyl, including its isomers, esters, ethers, salts, and salts of isomers, as described in Schedule II of the Drug Control Act, is guilty of a Class 4 felony. Additionally, a violation of this section constitutes a separate and distinct offense.

6. Budget Amendment Necessary: No. Item 404 of the Governor’s introduced budget (HB1400/SB800) includes a \$50,000 appropriation to address the provisions of the bill.

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

8. Fiscal Implications: This bill is not anticipated to impact the operations of the Department of Forensic Science.

The proposed legislation creates a new Class 4 felony, which is punishable by imprisonment of not less than two years nor more than 10 years and a fine of not more than \$100,000, or imprisonment alone.

According to Circuit Court Case Management System (CMS) data for fiscal years 2017 through 2022 provided by the Virginia Criminal Sentencing Commission, two offenders were convicted under § 18.2-46.6 for offenses involving the possession of an actual or imitation weapon of terrorism. This was the most serious offense in one case. The offender, who was convicted of two counts of this offense, was sentenced to serve a state-responsible (prison) term of 99 years. The other offender was sentenced to serve a local-responsible (jail) term of 20 months, with a five-year suspended sentence on each of two counts of an imitation weapon of terrorism violations. There were no convictions under § 18.2-46.5 during this time period. Sentencing Guidelines data from fiscal year 2021 through 2022 indicate that, among

cases involving the manufacture, etc. of a Schedule I or II drug as the most serious offense, 11 percent of cases involved fentanyl. Additionally, according to data from the Office of the Chief Medical Examiner, 2,667 individuals died in the Commonwealth in 2021 as a result of prescription drugs, over-the-counter drugs, illegal drugs, alcohol, inhalants, and other poisons.

By creating a new Class 4 felony and expanding the applicability of existing felonies, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Available data sources do not contain sufficient detail to estimate the number of additional felony convictions that may result from enactment of this proposal, therefore, the magnitude of the impact on prison bed space needs cannot be determined. 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 2, 2022 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Corrections, Courts, local and regional jails, law enforcement agencies, Commonwealth's Attorneys, Public Defenders' Offices, and Department of Forensic Science.

10. Technical Amendment Necessary: No.

11. Other Comments: None.