

988349304

HOUSE BILL NO. 381

Offered January 15, 1998

A *BILL to amend and reenact §§ 18.2-31 and 18.2-248 of the Code of Virginia, relating to manufacture, sale, etc. of certain quantities of cocaine or heroin; death penalty.*

Patron—Joannou

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-31 and 18.2-248 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-31. Capital murder defined; punishment.

The following offenses shall constitute capital murder, punishable as a Class 1 felony:

1. The willful, deliberate, and premeditated killing of any person in the commission of abduction, as defined in § 18.2-48, when such abduction was committed with the intent to extort money or a pecuniary benefit or with the intent to defile the victim of such abduction;

2. The willful, deliberate, and premeditated killing of any person by another for hire;

3. The willful, deliberate, and premeditated killing of any person by a prisoner confined in a state or local correctional facility as defined in § 53.1-1, or while in the custody of an employee thereof;

4. The willful, deliberate, and premeditated killing of any person in the commission of robbery or attempted robbery;

5. The willful, deliberate, and premeditated killing of any person in the commission of, or subsequent to, rape or attempted rape, forcible sodomy or attempted forcible sodomy or object sexual penetration;

6. The willful, deliberate, and premeditated killing of a law-enforcement officer as defined in § 9-169 (9) or any law-enforcement officer of another state or the United States having the power to arrest for a felony under the laws of such state or the United States, when such killing is for the purpose of interfering with the performance of his official duties;

7. The willful, deliberate, and premeditated killing of more than one person as a part of the same act or transaction;

8. The willful, deliberate, and premeditated killing of more than one person within a three-year period;

9. The willful, deliberate, and premeditated killing of any person in the commission of or attempted commission of a violation of § 18.2-248, involving a Schedule I or II controlled substance, when such killing is for the purpose of furthering the commission or attempted commission of such violation;

10. The willful, deliberate, and premeditated killing of any person by another pursuant to the direction or order of one who is engaged in a continuing criminal enterprise as defined in subsection 1 of § 18.2-248; and

11. The willful, deliberate and premeditated killing of a pregnant woman by one who knows that the woman is pregnant and has the intent to cause the involuntary termination of the woman's pregnancy without a live birth.

If any one or more subsections, sentences, or parts of this section shall be judged unconstitutional or invalid, such adjudication shall not affect, impair, or invalidate the remaining provisions thereof but shall be confined in its operation to the specific provisions so held unconstitutional or invalid.

§ 18.2-248. Manufacturing, selling, giving, distributing or possessing with intent to manufacture, sell, give or distribute a controlled substance or an imitation controlled substance prohibited; penalties.

A. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), it shall be unlawful for any person to manufacture, sell, give, distribute, or possess with intent to manufacture, sell, give or distribute a controlled substance or an imitation controlled substance.

B. In determining whether any person intends to manufacture, sell, give or distribute an imitation controlled substance, the court may consider, in addition to all other relevant evidence, whether any distribution or attempted distribution of such pill, capsule or tablet included an exchange of or a demand for money or other property as consideration, and, if so, whether the amount of such consideration was substantially greater than the reasonable value of such pill, capsule or tablet, considering the actual chemical composition of such pill, capsule or tablet and, where applicable, the price at which over-the-counter substances of like chemical composition sell.

C. ~~Any~~ Because the General Assembly finds that the unlawful manufacture, sale, or distribution of cocaine or heroin or the possession with intent to manufacture, sell, or distribute of cocaine or heroin results in so many serious injuries and deaths as to constitute an act of violence committed against all citizens of the Commonwealth, any person who manufactures, sells, distributes or possesses with intent

INTRODUCED

HB381

60 to manufacture, sell or distribute six or more grams of a mixture or substance containing a detectable
61 amount of heroin or twenty-eight or more grams of a mixture or substance containing a detectable
62 amount of cocaine shall be guilty of a Class 1 felony.

63 D. Except as provided in subsection C, any person who violates this section with respect to a
64 controlled substance classified in Schedule I or II shall upon conviction be imprisoned for not less than
65 five nor more than forty years and fined not more than \$500,000. Upon a second or subsequent
66 conviction of such a violation, any such person may, in the discretion of the court or jury imposing the
67 sentence, be sentenced to imprisonment for life or for any period not less than five years and be fined
68 not more than \$500,000.

69 DE. If such person proves that he gave, distributed or possessed with intent to give or distribute a
70 controlled substance classified in Schedule I or II only as an accommodation to another individual who
71 is not an inmate in a community correctional facility, local correctional facility or state correctional
72 facility as defined in § 53.1-1 or in the custody of an employee thereof, and not with intent to profit
73 thereby from any consideration received or expected nor to induce the recipient or intended recipient of
74 the controlled substance to use or become addicted to or dependent upon such controlled substance, he
75 shall be guilty of a Class 5 felony.

76 EF. If the violation of the provisions of this article consists of the filling by a pharmacist of the
77 prescription of a person authorized under this article to issue the same, which prescription has not been
78 received in writing by the pharmacist prior to the filling thereof, and such written prescription is in fact
79 received by the pharmacist within one week of the time of filling the same, or if such violation consists
80 of a request by such authorized person for the filling by a pharmacist of a prescription which has not
81 been received in writing by the pharmacist and such prescription is, in fact, written at the time of such
82 request and delivered to the pharmacist within one week thereof, either such offense shall constitute a
83 Class 4 misdemeanor.

84 FG. Any person who violates this section with respect to a controlled substance classified in
85 Schedule III, IV or V or an imitation controlled substance which imitates a controlled substance
86 classified in Schedule III, IV, or V, except for an anabolic steroid classified in Schedule III constituting
87 a violation of § 18.2-248.5, shall be guilty of a Class 1 misdemeanor.

88 GH. Any person who violates this section with respect to an imitation controlled substance which
89 imitates a controlled substance classified in Schedule I or II shall be guilty of a Class 6 felony. In any
90 prosecution brought under this subsection, it is not a defense to a violation of this subsection that the
91 defendant believed the imitation controlled substance to actually be a controlled substance.

92 HI. "Drug kingpin" means a person who was the principal or one of several principal administrators,
93 organizers or leaders of a continuing criminal enterprise if (i) the enterprise received at least \$500,000 in
94 gross receipts during any twelve-month period of its existence from the manufacture, importation, or
95 distribution of heroin or cocaine or ecgonine or the derivatives, salts, isomers, or salts of isomers thereof
96 or (ii) the person engaged in the enterprise to manufacture, sell, give, distribute or possess with the
97 intent to manufacture, sell, give or distribute the following:

- 98 1. 100 kilograms or more of a mixture or substance containing a detectable amount of heroin;
- 99 2. 500 kilograms or more of a mixture or substance containing a detectable amount of:
 - 100 a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and
 - 101 derivatives of ecgonine or their salts have been removed;
 - 102 b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;
 - 103 c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
 - 104 d. Any compound, mixture, or preparation which contains any quantity of any of the substances
 - 105 referred to in subdivisions a through c; or
- 106 3. 1.5 kilograms or more of a mixture or substance described in subdivision 2 which contains
- 107 cocaine base.

108 Any Because the General Assembly finds that the unlawful manufacture, sale distribution or
109 possession with intent to manufacture, sell or distribute controlled substances results in so many serious
110 injuries and deaths as to constitute an act of violence committed against all citizens of the
111 Commonwealth, any person who is found to be a drug kingpin shall upon conviction be guilty of a
112 Class 1 felony punishable by a fine of not more than one million dollars and imprisonment for twenty
113 years to life, twenty years of which shall be a mandatory, minimum sentence which shall be served with
114 no suspension in whole or in part, nor shall anyone convicted hereunder be placed on probation or
115 parole.

116 IJ. For purposes of subsection H of this section, a person is engaged in a continuing criminal
117 enterprise if (i) he violates any provision of this section, the punishment for which is a felony and (ii)
118 such violation is a part of a continuing series of violations of this section which are undertaken by such
119 person in concert with five or more other persons with respect to whom such person occupies a position
120 of organizer, a supervisory position, or any other position of management, and from which such person
121 obtains substantial income or resources.

122 2. That the provisions of this act may result in a net increase in periods of imprisonment in state
123 correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation
124 is \$9,544,750.

INTRODUCED

HB381