



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 858 (Patron – Yost)

LD#: 12103610

Date: 1/9/2012

Topic: Schedule IV controlled substances

Fiscal Impact Summary:

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

- **Juvenile Correctional Centers:**
Cannot be determined, likely to be small
- **Juvenile Detention Facilities:**
Cannot be determined, likely to be small

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 890 of the 2011 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposed legislation amends § 54.1-3452 of the *Code* to add tramadol (trade names: Ultram®, Ultracet®), which is a prescription pain-relieving medication, to Schedule IV of the Virginia Drug Control Act.

Tramadol is a centrally-acting analgesic used for the treatment of moderate to moderately severe pain in adults. According to the IMS Health National Prescription Audit Plus™, retailers dispensed 28.2 million tramadol prescriptions in 2009. According to the Drug Enforcement Administration (DEA), “although the United States Department of Health and Human Services has not recommended the scheduling of this substance in the federal Controlled Substances Act, a requirement necessary for the DEA to place a substance under control, the Food and Drug Administration has required the manufacturer of Ultram® to inform physicians about recent abuse data.”¹ In addition, Arkansas and Kentucky have designated tramadol as a Schedule IV drug under state law and Louisiana identified tramadol as demonstrating a potential for abuse. Tramadol has also been used in the illicit production of OxyContin® mimic tablets seized in Virginia and New York.²

Possession of a Schedule IV controlled substance is a Class 2 misdemeanor under § 18.2-250(A,b1). This offense is punishable by a term of incarceration of up to six months in jail. Distribution of a Schedule IV controlled substance as an accommodation is a Class 1 misdemeanor punishable by up to twelve months in jail under § 18.2-248(E3). Manufacturing, selling, giving, distributing, or possessing with intent to distribute a Schedule IV controlled substance in violation of § 18.2-248(E2) is a Class 6 felony punishable by imprisonment from one to five years. The penalty for sale of a Schedule IV controlled

¹ Drugs and Chemicals of Concern; Tramadol. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice. Available at http://www.deadiversion.usdoj.gov/drugs_concern/tramadol.pdf.

² *Microgram Bulletin*, Volume 42, Nos. 2 and 9 (February and September 2009). Drug Enforcement Administration, U. S. Department of Justice.

substance to a minor and using a minor to assist in the distribution of a Schedule IV drug is punishable by imprisonment from ten to fifty years. The sale, distribution, etc., of an imitation Schedule IV drug is a Class 6 felony.

Analysis:

According to General District Court Automated Information System (CAIS) data for fiscal years 2010 and 2011, there were 356 convictions for misdemeanor possession of a Schedule IV controlled substance. This offense was the primary, or most serious, offense in 246 cases. The majority of offenders (80.1%) received no active term of incarceration. The remaining offenders (19.9%) were sentenced to local-responsible (jail) terms with a median sentence of approximately one month. In addition, two offenders were convicted of distribution of a Schedule IV controlled substance as an accommodation as the primary offense. While one offender did not receive an active term of incarceration to serve after sentencing, the other offender was sentenced to one month in jail.

According to CAIS Circuit Court data for the same time period, 158 offenders were convicted of a felony for manufacturing, selling, giving, distributing, or possessing with intent to distribute a Schedule IV controlled substance. This offense was the primary, or most serious, offense in 56 of the cases. While 24 of these offenders (42.9%) did not receive an active term of incarceration to serve after sentencing, 46.4% of the offenders were sentenced to local-responsible (jail) terms, with a median sentence of three months. The remaining six offenders received state-responsible (prison) terms with a median sentence of approximately 1.6 years.

Impact of Proposed Legislation:

State adult correctional facilities. The proposed legislation expands the list of Schedule IV controlled substances by adding tramadol. In this way, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The number of additional convictions that may result from the proposal cannot be estimated. Therefore, the impact of the proposal cannot be quantified.

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

Adult community corrections programs. The proposal's impact on the need for adult community corrections resources cannot be determined.

Virginia's sentencing guidelines. Violations involving Schedule IV controlled substances are not covered by the guidelines as the primary (or most serious) offense; however, 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 correctional centers. According to the Department of Juvenile Justice, the legislative proposal may have an impact on juvenile correctional center bed space needs. While the actual impact on juvenile correctional center bed space needs cannot be determined, it is likely to be small.

Juvenile detention facilities. According to the Department of Juvenile Justice, the legislative proposal may have an impact on juvenile detention facility bed space needs. The actual impact on juvenile correctional center bed space needs cannot be determined but is likely to be small.

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 890 of the 2011 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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