



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 575 (Patron – O'Bannon)

LD#: 14102412

Date: 12/27/2013

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
- **Juvenile Detention Facilities:**
Cannot be determined

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 806 of the 2013 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 would amend § 54.1-3452 of the *Code of Virginia* to add lorcaserin (trade name: Belviq®), a prescription medication for on-going weight-management, to Schedule IV of the Virginia Drug Control Act.

The Drug Enforcement Administration (DEA) placed lorcaserin, a serotonin receptor antagonist, into Schedule IV of the federal Controlled Substances Act (CSA), effective June 7, 2013. The basis for this determination was a DEA study of eight factors, including items such as diversion of the drug from legitimate sources and abuse potential, as well as 15 comments in support of adding the drug to Schedule IV that were received during a public comment period.¹

Possession of a Schedule IV controlled substance is a Class 2 misdemeanor under § 18.2-250(A,b1), which is punishable by incarceration of up to six months in jail. Distribution of a Schedule IV controlled substance as an accommodation is a Class 1 misdemeanor under § 18.2-248(E3) carrying up to twelve months in jail. 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 substance to a minor and using a minor to assist in the distribution of a Schedule IV drug is imprisonment from ten to fifty years. The sale, distribution, etc., of an imitation Schedule IV drug is a Class 6 felony.

¹ Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice. Available at http://www.deadiversion.usdoj.gov/fed_regs/rules/2013/fr0508.htm (accessed December 23, 2013).

Analysis:

According to General District Court Case Management System (CMS)² data for fiscal year (FY) 2012 and FY2013, there were 540 sentencing events involving a misdemeanor conviction for possession of a Schedule IV controlled substance. This offense was the primary, or most serious, offense in 337 cases. The majority of offenders (79.3%) received no active term of incarceration to serve after sentencing. The remaining offenders (29.7%) were sentenced to local-responsible (jail) terms with a median sentence of approximately one month. In addition, one offender was convicted of distribution of a Schedule IV controlled substance as an accommodation (as the primary offense); this offender did not receive an active term of incarceration to serve after sentencing.

According to Circuit Court CMS data for the same time period, 154 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 offense in 52 of the cases. Of these, 38.5% did not result in an active term of incarceration to serve after sentencing. Half (50%) of the offenders were sentenced to local-responsible (jail) terms, with a median sentence of 1.8 months. The remaining 11.5% of offenders received state-responsible (prison) terms, for which the median sentence was approximately 1.1 years.

Circuit Court CMS data for FY2012 and FY2013 also indicate that five offenders were convicted under §18.2-255(A,i) for selling a Schedule IV controlled substance to a minor. This offense was the primary offense in all five cases. Of these, one offender was sentenced to a local-responsible (jail) term of 10 months. The remaining four offenders received state-responsible (prison) terms with a median sentence of five years. Three additional offenders were convicted of distributing an imitation Schedule IV drug under §18.2-248(G) during this time period. In two of these cases, distribution was the most serious offense. Neither of these offenders was sentenced to a term of incarceration. According to available data, there were no convictions in circuit court for using a minor to assist in the distribution of a Schedule IV drug in FY2012 or FY2013.

Impact of Proposed Legislation:

State adult correctional facilities. The proposed legislation expands the list of Schedule IV controlled substances by adding lorazepam. 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. Offenses involving Schedule IV controlled substances are not covered by the guidelines as the primary (or most serious) offense; however, such a conviction 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 proposal may have an impact on juvenile correctional center bed space needs. However, the magnitude of the impact on juvenile correctional center bed space needs cannot be determined.

² Formerly referred to as the Court Automated Information System (CAIS).

Juvenile detention facilities. The Department of Juvenile Justice reports that, while the proposal may have an impact on juvenile detention bed space needs, the actual impact on juvenile detention facilities cannot be determined.

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 806 of the 2013 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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