



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 575

Amendment in the Nature of a Substitute (Patron Prior to Substitute – O'Bannon)

LD#: 14103956

Date: 1/15/2014

Topic: Schedule III and 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 § 54.1-3450 of the *Code of Virginia* to add perampanel (trade name: FYCOMPA®), a prescription medication for seizures, to Schedule III of the Virginia Drug Control Act. The Drug Enforcement Administration (DEA) placed perampanel, which has central nervous system depressant and hallucinogenic properties, into Schedule III of the federal Controlled Substances Act (CSA), effective January 2, 2014.¹ In addition, under the proposed changes to § 54.1-3452, lorcaserin (trade name: Belviq®) would be classified as a Schedule IV controlled substance. The DEA placed lorcaserin, a medication for on-going weight-management, into Schedule IV of the CSA on June 7, 2013.²

Possession of a Schedule III controlled substance is a Class 1 misdemeanor under § 18.2-250(A,b). Manufacturing, selling, giving, distributing, or possessing with the intent to distribute a Schedule III drug, excluding anabolic steroids, anabolic steroids is a Class 5 felony under § 18.2-248(E1). Pursuant to § 18.2-248(E3), distribution of a Schedule III controlled substance as an accommodation is a Class 1 misdemeanor. 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. Under § 18.2-248(E3), distribution of a Schedule IV controlled substance as an accommodation is a Class 1 misdemeanor. The sale, etc., of a Schedule IV controlled substance in violation of § 18.2-248(E2) is a Class 6 felony. The penalty for sale of a Schedule III or IV controlled substance to a minor and using a minor to assist in the distribution of a Schedule III or IV drug is imprisonment from ten to fifty years. The sale, distribution, etc., of an imitation Schedule III or 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/fr1202.htm (accessed January 15, 2014).

² 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)³ 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.

Circuit Court CMS data for the same time period indicate that 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.

According to General District CMS data for FY2011 and FY2012, 914 offenders were convicted of a misdemeanor for possession of a Schedule III controlled substance. More than half (59.8%) of these offenders did not receive an active term of incarceration to serve after sentencing. The remaining offenders (40.2%) were sentenced to a local-responsible (jail) term, with a median sentence of one month.

Sentencing Guidelines data for FY2012 and FY2013 indicate that 657 offenders were sentenced for distribution, etc., of a Schedule III drug in violation of § 18.2-248(E1) during this time period. This offense was the primary offense in 463 of the cases. While more than half (52.9%) of these offenders received a local-responsible (jail) term, with a median sentence of six months, roughly one-fifth (20.5%) did not receive an active term of incarceration to serve after sentencing. The remaining 26.6% were sentenced to a state-responsible (prison) term, with a median sentence of 1.3 years.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the list of Schedule III and Schedule IV controlled substances, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not contain sufficient detail to estimate the number of new felony convictions that may result from enactment of the proposal. Therefore, the magnitude of the impact on prison bed space needs cannot be quantified.

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

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. Felony convictions under § 18.2-248(E1) for distribution, etc., of a Schedule III controlled substance are covered by the current sentencing guidelines when this crime is the primary, or most serious, offense in a case. Offenses involving Schedule IV drugs are not covered by the

³ Formerly referred to as the Court Automated Information System (CAIS).

guidelines as the primary 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. The Department of Juvenile Justice reports the impact of this proposal on bed space needs for juvenile correctional centers cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that this proposal's impact on detention center bed space needs 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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