



## Fiscal Impact Statement for Proposed Legislation

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### Virginia Criminal Sentencing Commission

#### House Bill No. 1292 As Engrossed (Patron Prior to Engrossment – Pillion)

LD#: 16104262

Date: 2/23/2016

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\*\*

\*\*Provided by the Department of Juvenile Justice

\* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 665 of the 2015 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

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#### Summary of Proposed Legislation:

The proposed legislation amends § 54.1-3452 of the *Code of Virginia* to add eluxadoline (trade name: Viberzi), a prescription medication for diarrhea and abdominal pain, to Schedule IV of the Virginia Drug Control Act.

The Drug Enforcement Administration (DEA) published its Final Rule placing eluxadoline, which has central nervous system opioid properties, into Schedule IV of the federal Controlled Substances Act (CSA) on November 12, 2015. 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 one comment in support of adding the drug to Schedule IV received during a public comment period.<sup>1</sup>

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.

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<sup>1</sup> Schedules of Controlled Substances: Placement of Eluxadoline Into Schedule IV, 80 Fed. Reg. 69861 (November 12, 2015). Available at <https://federalregister.gov/a/2015-28718>.

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**Analysis:**

According to General District Court Case Management System (CMS) data for fiscal year (FY) 2014 and FY2015, there were 510 sentencing events involving a misdemeanor conviction for possession or accommodation of a Schedule IV controlled substance. This offense was the primary, or most serious, offense in 296 cases. The majority of offenders (70.5%) received no active term of incarceration to serve after sentencing. The remaining offenders (29.5%) 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); these offenders did not receive an active term of incarceration to serve after sentencing.

According to Circuit Court CMS data for the same time period, 207 offenders were convicted of a Class 6 felony under § 18.2-248(E2) for manufacturing, selling, etc., a Schedule IV controlled substance. This offense was the primary offense in 68 of the cases. Of these, 38.2% did not receive an active term of incarceration to serve after sentencing. Slightly less than half (47.1%) of the offenders were sentenced to local-responsible (jail) terms, with a median sentence of 2.5 months. The remaining 14.7% received state-responsible (prison) terms, for which the median sentence was 1.5 years.

Circuit Court CMS data for FY2014 and FY2015 also indicate that five additional offenders were convicted of distributing an imitation Schedule IV drug under § 18.2-248(G) during this time period. This offense was the primary offense in one case. This offender was sentenced to a local-responsible (jail) term of two months.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By expanding the list of Schedule IV controlled substances to include eluxadoline, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, the number of additional convictions that may result from the proposal cannot be estimated. Therefore, the magnitude of the impact on prison bed space needs cannot be determined.

**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 state community corrections resources. Since the number of cases that may be affected by the proposal cannot be determined, the potential impact on community corrections cannot be quantified.

**Virginia's sentencing guidelines.** The sentencing guidelines cover felony violations of § 18.2-248(E2) when this offense is the primary, or most serious, offense in a case. Other felony convictions 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 (DJJ), the impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of 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 665 of the 2015 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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