Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1616

(Patrons – Lingamfelter)

LD#: 17101315 **Date:** 1/3/2017

Topic: Felony homicide

Fiscal Impact Summary:

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

- **Juvenile Direct Care:** 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 780 of the 2016 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of $50,000.

Summary of Proposed Legislation:

The proposal amends § 18.2-33 to expand the definition of felony homicide. Under the proposal, a person would be guilty of felony homicide if the felonious act that resulted in the accidental death of another involved the manufacture, distribution, etc., of a Schedule I or II drug and such other person's death results from his use of the controlled substance and such controlled substance is a proximate cause of the death, regardless of the time or place death occurred in relation to the commission of the drug distribution. Felony homicide is punishable by imprisonment of 5 to 40 years. The proposal provides a reduced penalty if certain conditions are met.

The proposal is precipitated by a Virginia Court of Appeals decision (*Woodard v. Commonwealth*, 2013) relating to felony murder convictions in cases involving drug overdoses. In 1984, the Supreme Court of Virginia held that when "death results from ingestion of a controlled substance, classified in law as dangerous to human life, the homicide constitutes murder of the second degree within the intendment of *Code* § 18.2-33 if the substance had been distributed to the decedent in violation of the felony statutes of this Commonwealth." *Heacock v. Commonwealth*, 228 Va. 397, 405, 323 S.E.2d 90, 95 (1984). The Court of Appeals of Virginia upheld another felony murder conviction under § 18.2-33 for a methadone overdose death in 2012 (*Hylton v. Commonwealth*, 60 Va. App. 50, 723 S.E.2d 628 (2012)). However, in 2013, the same court reversed a conviction of felony murder related to the distribution and use of ecstasy and ruled that the "time and place elements of the felony-murder rule were not established" in that case (*Woodard v. Commonwealth*, 61 Va. App. 567, 739 S.E.2d 220 (2013)). In *Woodard*, the Court ruled that a conviction under § 18.2-33 for a death caused by a controlled substance requires that the killing be so

closely related in time, place, and causal connection as to be part of the same felonious criminal enterprise. The proposal would allow offenders who manufacture, sell, etc., a Schedule I or II controlled substance to be convicted of felony homicide if the recipient's use of the drug was a proximate cause of the death, regardless of the time or place death occurred in relation to the commission of the underlying felony.

Analysis:

According to the Office of the Chief Medical Examiner, 1,020 individuals died in the Commonwealth during 2015 as the result of drugs. The causes of death for these individuals included prescription drugs, over-the-counter drugs, illegal (street) drugs, alcohol, inhalants, and other poisons. According to the Virginia Medical Examiner Data System,[1] approximately 86.6% of the drug deaths in 2015 were attributed to Schedule I or II controlled substances.

Existing data sources do not contain sufficient detail to determine the number of Schedule I or II overdose deaths that could be linked to the individual who distributed the drug or whether the controlled substance was distributed illegally. However, individuals convicted of felony homicide under the proposed changes to § 18.2-33 may be sentenced similarly to offenders sentenced under existing provisions. According to the Sentencing Guidelines Database for fiscal year (FY) 2015 and FY2016, 16 individuals were convicted of felony murder under § 18.2-33. The murder was the primary, or most serious, offense in all cases. All of the offenders were sentenced to a state-responsible (prison) term, for which the median sentence length was 22 years and 6 months. Of the 16 cases, one offender was sentenced for distribution of a controlled substance alongside the murder conviction and received a sentence of seven years. However, data do not indicate if the death was associated with the drug offense.

Impact of Proposed Legislation:

State adult correctional facilities. Under current law, offenders whose manufacture, distribution, etc., of a Schedule I or II controlled substance results in the unintentional death of another may only be convicted of felony homicide if the death is so closely related in time, place, and causal connection as to be part of the same felonious criminal enterprise (*Woodard v. Commonwealth*, 2013). The proposal would allow offenders who manufacture, etc., a Schedule I or II drug to be convicted of felony homicide (punishable by up to 40 years imprisonment) if the recipient's use of the drug was a proximate cause of the death, regardless of the time or place death occurred in relation to the commission of the underlying felony. The proposal would serve to overrule the decision of the Court of Appeals in *Woodard v. Commonwealth*, and allow felony prosecutions and convictions for such acts to resume. By expanding the applicability of felony homicide to additional circumstances beyond what is currently allowed by law, the proposal is expected to result in a net increase in periods of imprisonment in state adult correctional facilities (prison). Thus, the proposal will likely increase the future state-responsible (prison) bed space needs of the Commonwealth above current needs. However, existing data sources do not provide sufficient detail to estimate the number of new felony convictions, or longer sentences, that would result from enactment of the proposal. Therefore, the impact on prison bed space needs cannot be determined.

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

[1] Virginia Medical Examiner Data System, Office of the Chief Medical Examiner, Virginia Department of Health. The data identifies the following drugs as Schedule I/II drugs: Amphetamine, Cocaine, Codeine, Fentanyl, Gabapentin, Heroin, Hydrocodone, Hydromorphone, Levorphanol, Meperidine, Meth, Methadone, Morphine (not with the presence of heroin), Oxycodone, Oxymorphone, Secobarbital, Tapentadol, THC, and Tramadol. Data maintained by the Office of the Chief Medical Examiner is by drug name and not Schedule. Data used for this analysis may exclude other drugs that are not easily identified as Schedule I/II.

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. Felony homicide convictions under § 18.2-33 are covered by the sentencing guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) 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 780 of the 2016 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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