



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1440

(Patron – Garrett)

LD#: 18104387

Date: 1/15/2018

Topic: Schedule I and II 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 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 836 of the 2017 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 § 54.1-3446 of the *Code of Virginia* to add the synthetic opioid MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl) piperazine) to the list of Schedule I controlled substances. The U.S. Drug Enforcement Administration (DEA) placed MT-45 in Schedule I of the federal Controlled Substance Act, effective January 12, 2018.¹ The proposal also adds naldemedine, used for the treatment of opioid-induced constipation, and dronabinol in an oral solution, used to treat nausea and vomiting caused by chemotherapy, to the list of Schedule II drugs. The DEA added dronabinol oral solution to Schedule II drugs effective November 22, 2017.² Effective September 29, 2017, the DEA removed naldemedine, including its salts, from the schedules of the Controlled Substances Act.³

Under current law, all offenses involving Schedule I or II drugs are felonies. Pursuant to § 18.2-250, possession of a Schedule I or II drug is a Class 5 felony, punishable by imprisonment up to 10 years. Selling, distributing, or manufacturing a Schedule I or II drug, or possessing such a drug with the intent to sell, distribute, or manufacture, is punishable by imprisonment up to 40 years. The maximum sentence for a second conviction of selling, distributing, etc., a Schedule I or II drug is life imprisonment, with a mandatory minimum sentence of three years; for a third conviction, the mandatory minimum sentence is ten years. Distribution of a Schedule I or II drug by accommodation is a Class 5 felony. The *Code*

¹ https://www.deadiversion.usdoj.gov/fed_regs/rules/2017/fr1213_3.htm

² <https://www.federalregister.gov/documents/2017/11/22/2017-25275/schedules-of-controlled-substances-placement-of-fda-approved-products-of-oral-solutions-containing>

³ <https://www.federalregister.gov/documents/2017/09/29/2017-20919/schedules-of-controlled-substances-removal-of-naldemedine-from-control>

includes additional felonies for transporting a Schedule I or II drug into the Commonwealth, distributing a Schedule I or II drug to a person under the age of 18, distributing near schools or other specified properties, and for possessing a Schedule I or II drug while possessing a firearm.

Analysis:

Existing data sources do not contain sufficient detail to identify cases that would be affected by the proposal. However, individuals convicted under the proposal may be sentenced similarly to offenders who are convicted under the existing felony provisions relating to Schedule I or II controlled substances. According to fiscal year (FY) 2016 and FY2017 Sentencing Guidelines data, there were 16,090 felony sentencing events in which a Schedule I or II drug crime was the primary, or most serious, offense. Approximately 65% of these sentencing events involved simple possession, while the remaining 35% were related to the sale or distribution of a Schedule I or II drug (§§ 18.2-248(C), 18.2-248(C1), 18.2-248(D) or 18.2-255(A,i)). Approximately half (48.2%) of the offenders convicted of simple possession were sentenced to an active term of incarceration: 38% were given a local-responsible (jail) term, with a median sentence length of three months, and 10.2% received a state-responsible (prison) term. For possession offenders committed to prison, the median sentence was 1.5 years. Offenders convicted of sales-related offenses were much more likely to be sentenced to a term of incarceration. While 23.2% were sentenced to a jail term, with a median sentence length of eight months, 65.1% received a prison term. For offenders committed to prison for a sales-related offense, the median sentence was 2.5 years.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of existing felony offenses to include additional chemical compounds, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing data do not provide sufficient detail to estimate the number of new felony convictions that could 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 of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for additional offenders, the proposal may increase the need for adult community corrections resources. However, the impact on community corrections programs cannot be calculated.

Virginia's sentencing guidelines. Simple possession of a Schedule I or II drug (§ 18.2-250(A)) and sales and distribution-related offenses defined in §§ 18.2-248(C), 18.2-248(C1), 18.2-248(D) or 18.2-255(A,i) are currently covered by the sentencing guidelines as the primary (most serious) offense. No adjustment to the guidelines would be necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice (DJJ), 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 836 of the 2017 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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