



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1860

(Patron – Guy)

LD#: 21101812

Date: 12/28/2020

Topic: Illegal obtainment of controlled substances or marijuana

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**

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1289 of the Acts of Assembly of 2020 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

Summary of Proposed Legislation:

The proposal amends § 18.2-258.1 of the *Virginia Code* relating to drugs obtained by fraud, deceit, forgery, or without a prescription. Currently, under § 18.2-258.1(A), it is a Class 6 felony “for any person to obtain or attempt to obtain any drug or procure or attempt to procure the administration of any controlled substance or marijuana: (i) by fraud, deceit, misrepresentation, embezzlement, or subterfuge; (ii) by the forgery or alteration of a prescription or of any written order; (iii) by the concealment of a material fact; or (iv) by the use of a false name or the giving of a false address.” The proposal would add a fifth provision (v) to this felony offense to include drugs obtained or procured “by means of the Internet, United States Postal Service, or other commercial delivery provider without a valid prescription or order of a practitioner while acting in the course of his professional practice.” The proposal includes exemptions to § 18.2-258.1(A,v) for any person authorized by state, federal, or local law to manufacture, compound, process, sell, or dispense controlled substances.

Under the current § 18.2-258.1(A), obtaining marijuana by any of the means listed is included in the Class 6 felony. The 2020 General Assembly enacted legislation that: 1) decriminalized simple possession of marijuana and provided a civil penalty of no more than \$25, 2) increased the quantity threshold at which the distribution, etc., of marijuana becomes a felony (from more than ½ ounce to

more than 1 ounce), and 3) established a rebuttable presumption that a person who possesses up to one ounce of marijuana possesses it for personal use only. This legislation became effective on July 1, 2020.

Analysis:

Existing data sources do not contain sufficient detail to identify the number of individuals who would be convicted of a felony for obtaining drugs by internet, postal service, or another commercial delivery provider without a valid prescription or order.

Offenders who possess controlled substances (including those obtained by the methods outlined in the proposed provision) could potentially be subject to prosecution under § 18.2-250(A) for unlawfully possessing those substances. According to fiscal year (FY) 2019 and FY2020 Sentencing Guidelines (SG) data, 15,769 offenders were convicted of a Class 5 felony for possession of a Schedule I or II controlled substance. According to FY2019 and FY2020 data from the General District Court Case Management System (CMS), 1,966 offenders were convicted of a misdemeanor for possession of Schedule III through VI controlled substances. These data sources do not contain sufficient detail to estimate the number of these offenders who may have obtained drugs via methods covered in the proposed provision.

If the proposal were enacted, affected offenders may be sentenced similarly to those who are currently convicted of the Class 6 felony under § 18.2-258.1(A). According to FY2019 and FY2020 SG data, a conviction for obtaining prescription by forgery or fraud (§ 18.2-258.1(A)) was the primary (or most serious) offense in 190 sentencing events. The majority of the offenders (88.6%) did not receive an active term of incarceration to serve after sentencing. Another 15.8% of the offenders received a local-responsible (jail) term with a median sentence length of three months. The remaining 1.6% of offenders were sentenced to a state-responsible (prison) term for which the median sentence was 1.5 years. For offenders who obtain Schedule I or II drugs in violation of the proposed provision, the Class 6 felony could potentially be charged in addition to the Class 5 felony offense for simple possession of such drugs.

Impact of Proposed Legislation:

State adult correctional facilities¹. This proposal would expand the applicability of the existing Class 6 felony under § 18.2-258.1(A). While this expansion may increase state-responsible (prison) bed space needs, the number of additional felony convictions that may result cannot be estimated. Therefore, the impact of the proposal cannot be determined.

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

Adult community corrections resources. 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 potential impact on state and local community corrections programs cannot be determined.

Virginia's sentencing guidelines. Felony convictions for prescription fraud under § 18.2-258.1(A) are covered by the sentencing guidelines as the primary (most serious) offense. No adjustment to the guidelines would be necessary under the proposal; however, the Commission will monitor sentencing patterns after enactment to determine if it is necessary to distinguish the elements of the new provision within the guidelines.

¹ Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

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 1289 of the Acts of Assembly of 2020 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.

prescription01_1812