

Department of Planning and Budget

2023 Fiscal Impact Statement

1. Bill Number: SB881

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: McDougle

3. Committee: Judiciary

4. Title: Felony homicide; certain drug offenses; penalty.

5. Summary: Provides that a person is guilty of felony homicide, which constitutes second degree murder and is punishable by confinement of not less than five nor more than 40 years, if the underlying felonious act that resulted in the killing of another involved the manufacture, sale, gift, or distribution of a Schedule I or II controlled substance to another and (i) such other person's death results from his use of the controlled substance and (ii) the controlled substance is the proximate cause of his death. The bill also provides that venue for a prosecution of this crime shall lie in the locality where the underlying felony occurred, where the use of the controlled substance occurred, or where death occurred. The bill also provides that if a person gave or distributed a Schedule I or II controlled substance only as an accommodation to another individual who is not an inmate in a community correctional facility, local correctional facility, or state correctional facility, or in the custody of an employee thereof, and not with intent to profit thereby from any consideration received or expected nor to induce the recipient of the controlled substance to use or become addicted to or dependent upon such controlled substance, he is guilty of a Class 5 felony.

6. Budget Amendment Necessary: Yes. Item 404.

7. Fiscal Impact Estimates: Preliminary (see Item # 8).

8. Fiscal Implications: According to data provided by the Virginia Criminal Sentencing Commission (VCSC), from FY 2017 through FY 2022, 30 individuals were convicted and sentenced for manufacturing, distributing, etc., Schedule I or II drugs to terms of incarceration that exceeded what was recommended by the Sentencing Guidelines and cited death as the reason for the upward departure. These individuals received a prison term (state-responsible) for which the median sentence was five years. During the same time period, 73 individuals were convicted and sentenced of felony murder under § 18.2-33 (as the primary, or most serious offense, at sentencing). All but one of these offenders were sentenced to a state-responsible (prison) term for which the median sentence was 20.5 years. These data do not indicate if any of the deaths were associated with the use of drugs; however, three of the individuals were also convicted of selling a Schedule I or II drug as an additional offense.

By expanding the applicability of felony homicide, the VCSC estimates the impact on future state-responsible (prison) bed space needs will be an additional five beds statewide by FY 2029. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$255,020.

The impact on adult community corrections programs, juvenile direct care, and juvenile detention facilities is indeterminate at this time. The proposed bill is not expected to have a fiscal impact on other state agencies.

- 9. Specific Agency or Political Subdivisions Affected:** Courts, law enforcement agencies, Commonwealth's Attorney's, Public Defender Offices, Department of Corrections, and local and regional jails.

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** This is the companion bill to HB 1642