



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 469 (Patron – Obenshain)

LD#: 24104018

Date: 01/03/2024

Topic: Encapsulating and tableting machines, fentanyl & adulterated drugs

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 1 of the Acts of Assembly of 2023, Special Session I, 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 expands § 18.2-248.02 to make it a felony, punishable by imprisonment of 10 to 40 years, to allow a minor or incapacitated person to be present during the manufacturing or attempted manufacturing of any drug that includes any detectable amount of fentanyl.

In addition, the proposal adds § 18.2-248.05 to make it a Class 6 felony for any person to possess, purchase, distribute, sell, or possess with intent sell an encapsulating or tableting machine that manufactures, converts, processes, or prepares controlled substances for introduction into the human body. Any person violating the proposed section knowing, intending, or having reasonable cause to believe that the machine will be used in the unlawful manufacture of a Schedule I or II drug or other specified substance would be guilty of a Class 5 felony.

Finally, as proposed, the penalty for adulterating or misbranding drugs or cosmetic under § 54.1-3458 is increased from a Class 2 misdemeanor to a Class 6 felony.¹

Analysis:

¹ Under current law, felony offenses defined in § 18.2-248.02 are eligible for the enhanced sentence credits specified in § 53.1-202.3, whereby offenders will serve a minimum of 67% of the sentence ordered by the court. The proposed felonies would also be eligible for the enhanced sentence credits.

The number of individuals who would be convicted of the proposed felony offenses is not known.

Defendants convicted of the proposed felony for allowing a minor or incapacitated person to be present during the manufacturing, or attempted manufacturing of any drug that includes fentanyl may be sentenced similarly to defendants convicted of allowing a minor or incapacitated person to be present during the manufacturing of methamphetamine (§ 18.2-248.02). According to fiscal year (FY) 2018 through FY2023 Circuit Court Case Management System (CMS), seven defendants were convicted under § 18.2-248.02 where the conviction was the primary, or most serious, offense in the sentencing event. Three defendants received probation without an active term of incarceration and four received a state-responsible (prison) term with a median sentence of 3.0 years.

Defendants convicted of the proposed Class 6 felony may be sentenced similarly to offenders currently convicted for possession of methamphetamine precursors with intent to manufacture methamphetamine, a Class 6 felony defined in § 18.2-248(J). According to fiscal year (FY) 2018 through FY2023 Sentencing Guidelines data, nine offenders were convicted of possessing methamphetamine precursors as the primary (or most serious) offense at sentencing. Two-thirds (66.7%) of these offenders received a local-responsible (jail) term for which the median sentence was 9.5 months. The remaining one-third (33.3%) received a state prison term. For offenders sentenced to prison, the median sentence was 1.5 years.

Defendants convicted of the proposed Class 5 felony may be sentenced similarly to offenders currently convicted of possessing burglary tools or implements with the intent to commit a burglary, robbery or larceny, a Class 5 felony defined in § 18.2-94. Based on FY2018-FY2023 Sentencing Guidelines data, 161 offenders were convicted of this crime as the most serious offense. Of these offenders, 39.1% were given a state prison term with a median sentence of 1.7 years. Another 40.4% were given a jail term and the median sentence in these cases was 4.0 months. The remaining 20.5% of offenders were given probation without an active term of incarceration to serve after sentencing.

According to fiscal year FY2018 through FY2023 General District Court CMS data there were nine convictions when the primary, or most serious, offense in the sentencing event was adulterating or misbranding drugs or cosmetics. All received probation without an active term of incarceration.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal would create four new felony offenses. Available data are insufficient, however, to identify the number of defendants who may be convicted of the proposed felonies or to estimate the number of new state-responsible prison sentences that may result from enactment of the proposal. Thus, the magnitude of the impact on prison bed space needs cannot be quantified.

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

Adult community corrections resources. Because the proposal could result in convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases affected cannot be determined, the potential impact on community corrections cannot be determined.

Virginia's Sentencing Guidelines. As new felonies, convictions under the proposed §§ 18.2-248.02, 18.2-248.05 and 54.1-3458 would not be covered by the Sentencing Guidelines when the offense is the primary, or most serious, offense in a case. Convictions under these provisions could augment the Guidelines recommendation (as an additional offense) if the most serious offense at sentencing is covered by the Guidelines. If the proposal were enacted, the Sentencing Commission in the future would conduct detailed analyses of sentencing patterns under the new provision to determine the feasibility of adding the new felonies to the Guidelines system. If enacted, the new felonies would not be defined as violent in

§ 17.1-805(C) for the purposes of the 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. According to the Department of Juvenile Justice, the impact of the proposal on the bed space needs of juvenile detention facilities cannot be determined.

Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4 of the Code of Virginia, 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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