

25101885D

HOUSE BILL NO. 1849

Offered January 13, 2025

Prefiled January 6, 2025

A BILL to amend and reenact § 18.2-248 of the Code of Virginia, relating to manufacturing, selling, giving, distributing, etc., of fentanyl; weight-based and pill-based penalties.

Patron—Arnold

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-248 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-248. Manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled substance or an imitation controlled substance prohibited; penalties.

A. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), it shall be unlawful for any person to manufacture, sell, give, distribute, or possess with intent to manufacture, sell, give or distribute a controlled substance or an imitation controlled substance.

B. In determining whether any person intends to manufacture, sell, give or distribute an imitation controlled substance, the court may consider, in addition to all other relevant evidence, whether any distribution or attempted distribution of such pill, capsule, tablet or substance in any other form whatsoever included an exchange of or a demand for money or other property as consideration, and, if so, whether the amount of such consideration was substantially greater than the reasonable value of such pill, capsule, tablet or substance in any other form whatsoever, considering the actual chemical composition of such pill, capsule, tablet or substance in any other form whatsoever and, where applicable, the price at which over-the-counter substances of like chemical composition sell.

C. Except as provided in subsection C1, any person who violates this section with respect to a controlled substance classified in Schedule I or II shall upon conviction be imprisoned for not less than five nor more than 40 years and fined not more than \$500,000. Upon a second conviction of such a violation, and it is alleged in the warrant, indictment, or information that the person has been before convicted of such an offense or of a substantially similar offense in any other jurisdiction, which offense would be a felony if committed in the Commonwealth, and such prior conviction occurred before the date of the offense alleged in the warrant, indictment, or information, any such person may, in the discretion of the court or jury imposing the sentence, be sentenced to imprisonment for life or for any period not less than five years, three years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence, and he shall be fined not more than \$500,000.

When a person is convicted of a third or subsequent offense under this subsection and it is alleged in the warrant, indictment or information that he has been before convicted of two or more such offenses or of substantially similar offenses in any other jurisdiction which offenses would be felonies if committed in the Commonwealth and such prior convictions occurred before the date of the offense alleged in the warrant, indictment, or information, he shall be sentenced to imprisonment for life or for a period of not less than 10 years, 10 years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence, and he shall be fined not more than \$500,000.

Any person who manufactures, sells, gives, distributes or possesses with the intent to manufacture, sell, give, or distribute the following is guilty of a felony punishable by a fine of not more than \$1 million and imprisonment for five years to life, five years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence:

1. 100 grams or more of a mixture or substance containing a detectable amount of heroin;
2. 500 grams or more of a mixture or substance containing a detectable amount of:
 - a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
 - b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;
 - c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
 - d. Any compound, mixture, or preparation that contains any quantity of any of the substances referred to in subdivisions 2a through 2c;
3. 250 grams or more of a mixture or substance described in subdivisions 2a through 2d that contain cocaine base; or
4. 10 grams or more of methamphetamine, its salts, isomers, or salts of its isomers or 20 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its

59 isomers;

60 5. 5 grams or more of fentanyl, its salts, isomers, or salts of its isomers or 10 grams or more of a mixture
61 or substance containing a detectable amount of fentanyl, its salts, isomers, or salts of its isomers; or

62 6. Fewer than 10 pills containing a detectable amount of fentanyl, its salts, isomers, or salts of its isomers.

63 The mandatory minimum term of imprisonment to be imposed for a violation of this subsection shall not
64 be applicable if the court finds that:

65 a. The person does not have a prior conviction for an offense listed in subsection C of § 17.1-805;

66 b. The person did not use violence or credible threats of violence or possess a firearm or other dangerous
67 weapon in connection with the offense or induce another participant in the offense to do so;

68 c. The offense did not result in death or serious bodily injury to any person;

69 d. The person was not an organizer, leader, manager, or supervisor of others in the offense, and was not
70 engaged in a continuing criminal enterprise as defined in subsection I; and

71 e. Not later than the time of the sentencing hearing, the person has truthfully provided to the
72 Commonwealth all information and evidence the person has concerning the offense or offenses that were part
73 of the same course of conduct or of a common scheme or plan, but the fact that the person has no relevant or
74 useful other information to provide or that the Commonwealth already is aware of the information shall not
75 preclude a determination by the court that the defendant has complied with this requirement.

76 C1. Any person who violates this section with respect to the manufacturing of methamphetamine, its salts,
77 isomers, or salts of its isomers or less than 200 grams of a mixture or substance containing a detectable
78 amount of methamphetamine, its salts, isomers, or salts of its isomers shall, upon conviction, be imprisoned
79 for not less than 10 nor more than 40 years and fined not more than \$500,000. Upon a second conviction of
80 such a violation, any such person may, in the discretion of the court or jury imposing the sentence, be
81 sentenced to imprisonment for life or for any period not less than 10 years, and be fined not more than
82 \$500,000. When a person is convicted of a third or subsequent offense under this subsection and it is alleged
83 in the warrant, indictment, or information that he has been previously convicted of two or more such offenses
84 or of substantially similar offenses in any other jurisdiction, which offenses would be felonies if committed in
85 the Commonwealth and such prior convictions occurred before the date of the offense alleged in the warrant,
86 indictment, or information, he shall be sentenced to imprisonment for life or for a period not less than 10
87 years, three years of which shall be a mandatory minimum term of imprisonment to be served consecutively
88 with any other sentence and he shall be fined not more than \$500,000.

89 Upon conviction, in addition to any other punishment, a person found guilty of this offense shall be
90 ordered by the court to make restitution, as the court deems appropriate, to any innocent property owner
91 whose property is damaged, destroyed, or otherwise rendered unusable as a result of such methamphetamine
92 production. This restitution shall include the person's or his estate's estimated or actual expenses associated
93 with cleanup, removal, or repair of the affected property. If the property that is damaged, destroyed, or
94 otherwise rendered unusable as a result of such methamphetamine production is property owned in whole or
95 in part by the person convicted, the court shall order the person to pay to the Methamphetamine Cleanup
96 Fund authorized in § 18.2-248.04 the reasonable estimated or actual expenses associated with cleanup,
97 removal, or repair of the affected property or, if actual or estimated expenses cannot be determined, the sum
98 of \$10,000. The convicted person shall also pay the cost of certifying that any building that is cleaned up or
99 repaired pursuant to this section is safe for human occupancy according to the guidelines established pursuant
100 to § 32.1-11.7.

101 D. If such person proves that he gave, distributed or possessed with intent to give or distribute a controlled
102 substance classified in Schedule I or II only as an accommodation to another individual who is not an inmate
103 in a community correctional facility, local correctional facility or state correctional facility as defined in §
104 53.1-1 or in the custody of an employee thereof, and not with intent to profit thereby from any consideration
105 received or expected nor to induce the recipient or intended recipient of the controlled substance to use or
106 become addicted to or dependent upon such controlled substance, he shall be guilty of a Class 5 felony.

107 E. If the violation of the provisions of this article consists of the filling by a pharmacist of the prescription
108 of a person authorized under this article to issue the same, which prescription has not been received in writing
109 by the pharmacist prior to the filling thereof, and such written prescription is in fact received by the
110 pharmacist within one week of the time of filling the same, or if such violation consists of a request by such
111 authorized person for the filling by a pharmacist of a prescription which has not been received in writing by
112 the pharmacist and such prescription is, in fact, written at the time of such request and delivered to the
113 pharmacist within one week thereof, either such offense shall constitute a Class 4 misdemeanor.

114 E1. Any person who violates this section with respect to a controlled substance classified in Schedule III
115 except for an anabolic steroid classified in Schedule III, constituting a violation of § 18.2-248.5, shall be
116 guilty of a Class 5 felony.

117 E2. Any person who violates this section with respect to a controlled substance classified in Schedule IV
118 shall be guilty of a Class 6 felony.

119 E3. Any person who proves that he gave, distributed or possessed with the intent to give or distribute a

120 controlled substance classified in Schedule III or IV, except for an anabolic steroid classified in Schedule III,
 121 constituting a violation of § 18.2-248.5, only as an accommodation to another individual who is not an inmate
 122 in a community correctional facility, local correctional facility or state correctional facility as defined in §
 123 53.1-1 or in the custody of an employee thereof, and not with the intent to profit thereby from any
 124 consideration received or expected nor to induce the recipient or intended recipient of the controlled
 125 substance to use or become addicted to or dependent upon such controlled substance, is guilty of a Class 1
 126 misdemeanor.

127 F. Any person who violates this section with respect to a controlled substance classified in Schedule V or
 128 Schedule VI or an imitation controlled substance which imitates a controlled substance classified in Schedule
 129 V or Schedule VI, shall be guilty of a Class 1 misdemeanor.

130 G. Any person who violates this section with respect to an imitation controlled substance which imitates a
 131 controlled substance classified in Schedule I, II, III, or IV shall be guilty of a Class 6 felony. In any
 132 prosecution brought under this subsection, it is not a defense to a violation of this subsection that the
 133 defendant believed the imitation controlled substance to actually be a controlled substance.

134 H. Any person who manufactures, sells, gives, distributes or possesses with the intent to manufacture, sell,
 135 give or distribute the following:

136 1. 1.0 kilograms or more of a mixture or substance containing a detectable amount of heroin;
 137 2. 5.0 kilograms or more of a mixture or substance containing a detectable amount of:
 138 a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and
 139 derivatives of ecgonine or their salts have been removed;
 140 b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;
 141 c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
 142 d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred
 143 to in subdivisions a through c;

144 3. 2.5 kilograms or more of a mixture or substance described in subdivision 2 which contains cocaine
 145 base;

146 4. 100 kilograms or more of a mixture or substance containing a detectable amount of marijuana; ~~or~~

147 5. 100 grams or more of methamphetamine, its salts, isomers, or salts of its isomers or 200 grams or more
 148 of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of
 149 its isomers;

150 6. *25 grams or more of fentanyl, its salts, isomers, or salts of its isomers or 50 grams or more of a mixture*
 151 *or substance containing a detectable amount of fentanyl, its salts, isomers, or salts of its isomers; or*

152 7. *At least 10 pills but not more than 100 pills containing a detectable amount of fentanyl, its salts,*
 153 *isomers, or salts of its isomers shall be guilty of a felony punishable by a fine of not more than \$1 million and*
 154 *imprisonment for 20 years to life, 20 years of which shall be a mandatory minimum sentence. Such*
 155 *mandatory minimum sentence shall not be applicable if the court finds that (i) the person does not have a*
 156 *prior conviction for an offense listed in subsection C of § 17.1-805; (ii) the person did not use violence or*
 157 *credible threats of violence or possess a firearm or other dangerous weapon in connection with the offense or*
 158 *induce another participant in the offense to do so; (iii) the offense did not result in death or serious bodily*
 159 *injury to any person; (iv) the person was not an organizer, leader, manager, or supervisor of others in the*
 160 *offense, and was not engaged in a continuing criminal enterprise as defined in subsection I of this section;*
 161 *and (v) not later than the time of the sentencing hearing, the person has truthfully provided to the*
 162 *Commonwealth all information and evidence the person has concerning the offense or offenses that were part*
 163 *of the same course of conduct or of a common scheme or plan, but the fact that the person has no relevant or*
 164 *useful other information to provide or that the Commonwealth already is aware of the information shall not*
 165 *preclude a determination by the court that the defendant has complied with this requirement.*

166 H1. Any person who was the principal or one of several principal administrators, organizers or leaders of
 167 a continuing criminal enterprise shall be guilty of a felony if (i) the enterprise received at least \$100,000 but
 168 less than \$250,000 in gross receipts during any 12-month period of its existence from the manufacture,
 169 importation, or distribution of heroin or cocaine or ecgonine or methamphetamine or the derivatives, salts,
 170 isomers, or salts of isomers thereof or marijuana or (ii) the person engaged in the enterprise to manufacture,
 171 sell, give, distribute or possess with the intent to manufacture, sell, give or distribute the following during any
 172 12-month period of its existence:

173 1. At least 1.0 kilograms but less than 5.0 kilograms of a mixture or substance containing a detectable
 174 amount of heroin;

175 2. At least 5.0 kilograms but less than 10 kilograms of a mixture or substance containing a detectable
 176 amount of:

177 a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and
 178 derivatives of ecgonine or their salts have been removed;

179 b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

180 c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

181 d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred

182 to in subdivisions a through c;

183 3. At least 2.5 kilograms but less than 5.0 kilograms of a mixture or substance described in subdivision 2
184 which contains cocaine base;

185 4. At least 100 kilograms but less than 250 kilograms of a mixture or substance containing a detectable
186 amount of marijuana; ~~or~~

187 5. At least 100 grams but less than 250 grams of methamphetamine, its salts, isomers, or salts of its
188 isomers or at least 200 grams but less than 1.0 kilograms of a mixture or substance containing a detectable
189 amount of methamphetamine, its salts, isomers, or salts of its isomers;

190 6. *At least 50 grams but less than 100 grams of fentanyl, its salts, isomers, or salts of its isomers or at*
191 *least 100 grams but less than 250 grams of a mixture or substance containing a detectable amount of*
192 *fentanyl, its salts, isomers, or salts of its isomers; or*

193 7. *At least 100 pills but not more than 1,000 pills containing a detectable amount of fentanyl, its salts,*
194 *isomers, or salts of its isomers.*

195 A conviction under this section shall be punishable by a fine of not more than \$1 million and
196 imprisonment for 20 years to life, 20 years of which shall be a mandatory minimum sentence.

197 H2. Any person who was the principal or one of several principal administrators, organizers or leaders of
198 a continuing criminal enterprise if (i) the enterprise received \$250,000 or more in gross receipts during any
199 12-month period of its existence from the manufacture, importation, or distribution of heroin or cocaine or
200 ecgonine or methamphetamine or the derivatives, salts, isomers, or salts of isomers thereof or marijuana or
201 (ii) the person engaged in the enterprise to manufacture, sell, give, distribute or possess with the intent to
202 manufacture, sell, give or distribute the following during any 12-month period of its existence:

203 1. At least 5.0 kilograms of a mixture or substance containing a detectable amount of heroin;

204 2. At least 10 kilograms of a mixture or substance containing a detectable amount of:

205 a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and
206 derivatives of ecgonine or their salts have been removed;

207 b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

208 c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

209 d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred
210 to in subdivisions a through c;

211 3. At least 5.0 kilograms of a mixture or substance described in subdivision 2 which contains cocaine
212 base;

213 4. At least 250 kilograms of a mixture or substance containing a detectable amount of marijuana; ~~or~~

214 5. At least 250 grams of methamphetamine, its salts, isomers, or salts of its isomers or at least 1.0
215 kilograms of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers,
216 or salts of its isomers;

217 6. *At least 250 grams of fentanyl, its salts, isomers, or salts of its isomers or at least 1.0 kilograms of a*
218 *mixture or substance containing a detectable amount of fentanyl, its salts, isomers, or salts of its isomers; or*

219 7. *1,000 pills or more containing a detectable amount of fentanyl, its salts, isomers, or salts of its isomers*
220 *shall be guilty of a felony punishable by a fine of not more than \$1 million and imprisonment for life, which*
221 *shall be served with no suspension in whole or in part. Such punishment shall be made to run consecutively*
222 *with any other sentence. However, the court may impose a mandatory minimum sentence of 40 years if the*
223 *court finds that the defendant substantially cooperated with law-enforcement authorities.*

224 I. For purposes of this section, a person is engaged in a continuing criminal enterprise if (i) he violates any
225 provision of this section, the punishment for which is a felony and either (ii) such violation is a part of a
226 continuing series of violations of this section which are undertaken by such person in concert with five or
227 more other persons with respect to whom such person occupies a position of organizer, a supervisory
228 position, or any other position of management, and from which such person obtains substantial income or
229 resources or (iii) such violation is committed, with respect to methamphetamine or other controlled substance
230 classified in Schedule I or II, for the benefit of, at the direction of, or in association with any criminal street
231 gang as defined in § 18.2-46.1.

232 J. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), any person who possesses any two
233 or more different substances listed below with the intent to manufacture methamphetamine, methcathinone,
234 or amphetamine is guilty of a Class 6 felony: liquefied ammonia gas, ammonium nitrate, ether,
235 hypophosphorus acid solutions, hypophosphite salts, hydrochloric acid, iodine crystals or tincture of iodine,
236 phenylacetone, phenylacetic acid, red phosphorus, methylamine, methyl formamide, lithium, sodium metal,
237 sulfuric acid, sodium hydroxide, potassium dichromate, sodium dichromate, potassium permanganate,
238 chromium trioxide, methylbenzene, methamphetamine precursor drugs, trichloroethane, or 2-propanone.

239 K. The term "methamphetamine precursor drug," when used in this article, means a drug or product
240 containing ephedrine, pseudoephedrine, or phenylpropanolamine or any of their salts, optical isomers, or salts
241 of optical isomers.

242 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**

243 commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary
244 appropriation cannot be determined for periods of imprisonment in state adult correctional facilities;
245 therefore, Chapter 2 of the Acts of Assembly of 2024, Special Session I, requires the Virginia Criminal
246 Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the
247 Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for
248 periods of commitment to the custody of the Department of Juvenile Justice.

INTRODUCED

HB1849