



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill 2296

(Patrons – Earley and Owen)

LD#: 25100982

Date: 12/11/2024

Topic: Reckless exposure of fentanyl to certain persons

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 2 of the Acts of Assembly of 2024, 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 would amend § 18.2-51.1 to establish additional criminal penalties for any individual who recklessly exposes a law enforcement officer, correctional or jail officer, firefighter, search and rescue personnel, or emergency medical services personnel to fentanyl and such exposure causes severe bodily injury or an overdose.¹ This offense would be punishable as a Class 4 felony.

The proposal also provides that no individual incarcerated in a local, regional, or state correctional facility shall be subject to arrest or prosecution for such offense if such individual seeks or obtains emergency medical attention for himself or another individual experiencing an overdose or is experiencing an overdose and another individual seeks or obtains emergency medical attention for him.

Analysis:

According to the Virginia Department of Forensic Science (DFS), the number of the illicit synthetic opioid cases submitted to DFS has consistently increased since 2014. For example, the number was 4,671 in 2020, but it increased to 7,175 in 2023. Regarding the submitted cases, about 99% of illicit synthetic opioids are fentanyl or fentanyl analogs.

¹ Under current law, any unlawful felonious assault or bodily wounding under § 18.2-51.1 is ineligible for the enhanced sentence credits if such offense is a second or subsequent violation of the specified offenses under § 53.1-202.3 (17), in any combination, when such offenses were not part of a common act, transaction, or scheme and such person has been at liberty between each conviction; in such cases, individuals convicted of the proposed felony offenses will serve a minimum of 85% of the sentence ordered by the court. Otherwise, the offense is eligible for the enhanced sentence credits provided in § 53.1-202.3.

Existing databases do not provide sufficient detail to estimate the number of new convictions likely to result from enactment of the proposal. However, individuals convicted due to the proposed Class 4 felony offense may be sentenced similarly to offenders currently convicted under existing provisions. According to the Circuit Court Case Management System (CMS) data for fiscal year (FY) 2019 through 2024, eight offenders were convicted of a Class 4 felony under § 18.2-154 for shooting or throwing a missile at a law-enforcement or emergency vehicle.² This conviction was the primary, or most serious, offense for three offenders; all three offenders were sentenced to state-responsible (prison) terms for which the median sentence was eight years.

Impact of Proposed Legislation:

State adult correctional facilities. By establishing a new criminal penalty associated with reckless exposure of fentanyl, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Since the number of individuals who may be subject to such penalties cannot be determined with available data, the magnitude of the impact on prison beds cannot be determined.

Local adult correctional facilities. The proposal may impact the local-responsible (jail) bed space needs, but the magnitude of the impact cannot be quantified.

Adult community corrections programs. The impact on community corrections resources cannot be determined. Affected offenders may currently be convicted of a drug offense in violation of § 18.2-250; however, the proposal may result in longer terms of incarceration for some offenders who would also be convicted of a proposed felony under § 18.2-51.1 (C). This would delay the need for services as these individuals would serve longer in prison prior to being released to the community.

Virginia's Sentencing Guidelines. As a new felony in the *Code of Virginia*, the Sentencing Guidelines would not cover violations of § 18.2-51.1(C). Convictions for this crime may augment the Guidelines recommendation if the most serious offense at sentencing is covered by the Guidelines. The proposed Class 4 felony would be defined as violent under § 17.1-805(C) for Guidelines purposes. No immediate adjustment to the Guidelines would be necessary under the proposal. If the proposal is enacted, the Sentencing Commission in the future would conduct analyses to determine the feasibility of adding the new felony to the Guidelines system.

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 2 of the Acts of Assembly of 2024, Special Session I, 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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² This felony offense carries a mandatory minimum term of one year if it is a completed act.