



## Impact Analysis on Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill 1258 (Patron—Durant)

LD#: 25104289

Date: 01/06/2025

Topic: Possession of fentanyl in presence of minor

#### 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:**  
None (\$0) \*\*
- **Juvenile Detention Facilities:**  
None (\$0) \*\*

\*\* 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 add § 18.2-251.6 to the *Code* to establish a criminal penalty for any individual who possesses fentanyl in the presence of a minor. According to the proposal, it would be a Class 3 felony for any person who is 18 years of age or older to knowingly possess any substance containing a detectable amount of fentanyl, including its derivatives, isomers, esters, ethers, salts, and salts of isomers, in the presence of a minor younger than 15 years of age.<sup>1</sup> The proposal also specifies that the person who obtained such substance directly from, or pursuant to, a valid prescription or order of a practitioner is exempted from the prohibition.

#### 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. Illicit synthetic opioid submissions increased from 4,671 in 2020 to 7,175 in 2023. Regarding the submitted cases, about 99% of illicit synthetic opioids are fentanyl or fentanyl analogs.

Existing databases do not provide sufficient detail to estimate the number of new convictions likely to result from enactment of the proposal.

<sup>1</sup> The proposed felony would be eligible for the enhanced sentence credits specified in § 53.1-202.3, whereby offenders serve a minimum of 67% of the sentence ordered by the court.

Data are available regarding the number of individuals convicted of manufacturing methamphetamine in the presence of a child. According to Circuit Court Case Management System (CMS) data for fiscal year (FY) 2019 through FY2024, 15 individuals were convicted of manufacturing or attempted manufacturing of methamphetamine while a child under the age 15 was present (§ 18.2-248.02). In five cases, this offense was the primary, or most serious, offense at sentencing. Three individuals (60%) were sentenced to a state-responsible (prison) term for which the median sentence was three years. The remaining two offenders (40%) received probation or were sentenced to the time served by the offender while awaiting trial.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By establishing a new criminal penalty associated with possession of fentanyl in presence of minor, 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 penalty 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.** 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 that may be affected cannot be determined, the potential impact on community corrections resources cannot be estimated.

**Virginia’s Sentencing Guidelines.** As a new felony in the *Code of Virginia*, the Sentencing Guidelines would not cover violations of § 18.2-251.6. Convictions for this crime may augment the Guidelines recommendation if the most serious offense at sentencing is covered by the Guidelines. The proposed Class 3 felony would not 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 (DJJ), the proposal is not expected to increase direct care (juvenile correctional center or alternative commitment placement) bed space needs.

**Juvenile detention facilities.** The Department of Juvenile Justice (DJJ) reports that the proposal will not increase the bed space needs of juvenile detention facilities.

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**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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**