

## 1 SENATE BILL NO. 1235

## 2 AMENDMENT IN THE NATURE OF A SUBSTITUTE

3 (Proposed by the Senate Committee for Courts of Justice)

4 on )

5 (Patron Prior to Substitute—Senator DeSteph)

6 *A BILL to amend and reenact §§ 18.2-33 and 18.2-248 of the Code of Virginia, relating to manufacturing,*  
7 *selling, giving, distributing, etc., of fentanyl, heroin, or related controlled substances; penalties.*

8 on \_\_\_\_\_)

9 **Be it enacted by the General Assembly of Virginia:**10 **1. That §§ 18.2-33 and 18.2-248 of the Code of Virginia are amended and reenacted as follows:**11 **§ 18.2-33. Felony homicide defined; punishment.**12 A. The killing of one accidentally, contrary to the intention of the parties, while in the prosecution of some  
13 felonious act other than those specified in §§ 18.2-31 and 18.2-32, is murder of the second degree and is  
14 punishable by confinement in a state correctional facility for not less than five years nor more than ~~forty~~ 40  
15 years.16 *B. A person is guilty of felony homicide under subsection A if the felonious act that resulted in the killing*  
17 *of one accidentally, contrary to the intention of the parties, involved the manufacture, sale, gift, or*  
18 *distribution of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et*  
19 *seq.) to another person in violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 and (i) such other person's*  
20 *death results from his use of the controlled substance and (ii) such controlled substance is the proximate*  
21 *cause of the death of such other person regardless of the time or place death occurred in relation to the*  
22 *commission of the underlying felony. It is not a defense to a prosecution under this subsection that the*  
23 *decedent contributed to his own death by his knowing or voluntary use of the controlled substance. Venue for*  
24 *a prosecution under this subsection shall lie in the locality where the felony violation of Article 1 of Chapter*  
25 *7 occurred, where the use of the controlled substance occurred, or where death occurred.*26 *C. However, if a person proves that he gave or distributed a controlled substance classified in Schedule I*  
27 *or II of the Drug Control Act (§ 54.1-3400 et seq.) only as an accommodation to another individual who is*  
28 *not an inmate in a community correctional facility, local correctional facility, or state correctional facility as*  
29 *defined in § 53.1-1, or in the custody of an employee thereof, and not with intent to profit thereby from any*  
30 *consideration received or expected nor to induce the recipient of the controlled substance to use or become*

31     *addicted to or dependent upon such controlled substance, he is guilty of a Class 5 felony.*

32     **§ 18.2-248. Manufacturing, selling, giving, distributing, or possessing with intent to manufacture,**  
33     **sell, give, or distribute a controlled substance or an imitation controlled substance prohibited;**  
34     **penalties.**

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

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

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

56       When a person is convicted of a third or subsequent offense under this subsection and it is alleged in the  
57     warrant, indictment or information that he has been before convicted of two or more such offenses or of  
58     substantially similar offenses in any other jurisdiction which offenses would be felonies if committed in the  
59     Commonwealth and such prior convictions occurred before the date of the offense alleged in the warrant,

60 indictment, or information, he shall be sentenced to imprisonment for life or for a period of not less than 10  
61 years, 10 years of which shall be a mandatory minimum term of imprisonment to be served consecutively  
62 with any other sentence, and he shall be fined not more than \$500,000.

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

67 1. 100 grams or more of a mixture or substance containing a detectable amount of heroin;

68 2. 500 grams or more of a mixture or substance containing a detectable amount of:

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

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

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

73 d. Any compound, mixture, or preparation that contains any quantity of any of the substances referred to  
74 in subdivisions 2a a through 2e c;

75 3. 250 grams or more of a mixture or substance described in subdivisions 2a through 2d subdivision 2 that  
76 contain cocaine base; or

77 4. 10 grams or more of methamphetamine, its salts, isomers, or salts of its isomers or 20 grams or more of  
78 a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its  
79 isomers.

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

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

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

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

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

88 e. Not later than the time of the sentencing hearing, the person has truthfully provided to the

89 Commonwealth all information and evidence the person has concerning the offense or offenses that were part  
90 of the same course of conduct or of a common scheme or plan, but the fact that the person has no relevant or  
91 useful other information to provide or that the Commonwealth already is aware of the information shall not  
92 preclude a determination by the court that the defendant has complied with this requirement.

93 C1. Any person who violates this section with respect to the manufacturing of methamphetamine, its salts,  
94 isomers, or salts of its isomers or less than 200 grams of a mixture or substance containing a detectable  
95 amount of methamphetamine, its salts, isomers, or salts of its isomers shall, upon conviction, be imprisoned  
96 for not less than 10 nor more than 40 years and fined not more than \$500,000. Upon a second conviction of  
97 such a violation, any such person may, in the discretion of the court or jury imposing the sentence, be  
98 sentenced to imprisonment for life or for any period not less than 10 years, and be fined not more than  
99 \$500,000. When a person is convicted of a third or subsequent offense under this subsection and it is alleged  
100 in the warrant, indictment, or information that he has been previously convicted of two or more such offenses  
101 or of substantially similar offenses in any other jurisdiction, which offenses would be felonies if committed in  
102 the Commonwealth and such prior convictions occurred before the date of the offense alleged in the warrant,  
103 indictment, or information, he shall be sentenced to imprisonment for life or for a period not less than 10  
104 years, three years of which shall be a mandatory minimum term of imprisonment to be served consecutively  
105 with any other sentence and he shall be fined not more than \$500,000.

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

118        D. If such person proves that he gave, distributed or possessed with intent to give or distribute a controlled  
119 substance classified in Schedule I or II only as an accommodation to another individual who is not an inmate  
120 in a community correctional facility, local correctional facility or state correctional facility as defined in §  
121 53.1-1 or in the custody of an employee thereof, and not with intent to profit thereby from any consideration  
122 received or expected nor to induce the recipient or intended recipient of the controlled substance to use or  
123 become addicted to or dependent upon such controlled substance, he shall be guilty of a Class 5 felony.

124        E. If the violation of the provisions of this article consists of the filling by a pharmacist of the prescription  
125 of a person authorized under this article to issue the same, which prescription has not been received in writing  
126 by the pharmacist prior to the filling thereof, and such written prescription is in fact received by the  
127 pharmacist within one week of the time of filling the same, or if such violation consists of a request by such  
128 authorized person for the filling by a pharmacist of a prescription which has not been received in writing by  
129 the pharmacist and such prescription is, in fact, written at the time of such request and delivered to the  
130 pharmacist within one week thereof, either such offense shall constitute a Class 4 misdemeanor.

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

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

136        E3. Any person who proves that he gave, distributed or possessed with the intent to give or distribute a  
137 controlled substance classified in Schedule III or IV, except for an anabolic steroid classified in Schedule III,  
138 constituting a violation of § 18.2-248.5, only as an accommodation to another individual who is not an inmate  
139 in a community correctional facility, local correctional facility or state correctional facility as defined in §  
140 53.1-1 or in the custody of an employee thereof, and not with the intent to profit thereby from any  
141 consideration received or expected nor to induce the recipient or intended recipient of the controlled  
142 substance to use or become addicted to or dependent upon such controlled substance, is guilty of a Class 1  
143 misdemeanor.

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

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

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

153        1. 1.0 kilograms or more of a mixture or substance containing a detectable amount of heroin;

154        2. 5.0 kilograms or more of a mixture or substance containing a detectable amount of:

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

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

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

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

161        3. 2.5 kilograms or more of a mixture or substance described in subdivision 2 which contains cocaine  
162        base;

163        4. 100 kilograms or more of a mixture or substance containing a detectable amount of marijuana; or

164        5. 100 grams or more of methamphetamine, its salts, isomers, or salts of its isomers or 200 grams or more  
165        of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of  
166        its isomers shall be guilty of a felony punishable by a fine of not more than \$1 million and imprisonment for

167        20 years to life, 20 years of which shall be a mandatory minimum sentence. Such mandatory minimum  
168        sentence shall not be applicable if the court finds that (i) the person does not have a prior conviction for an

169        offense listed in subsection C of § 17.1-805; (ii) the person did not use violence or credible threats of  
170        violence or possess a firearm or other dangerous weapon in connection with the offense or induce another

171        participant in the offense to do so; (iii) the offense did not result in death or serious bodily injury to any  
172        person; (iv) the person was not an organizer, leader, manager, or supervisor of others in the offense, and was

173        not engaged in a continuing criminal enterprise as defined in subsection I of this section; and (v) not later  
174        than the time of the sentencing hearing, the person has truthfully provided to the Commonwealth all

175        information and evidence the person has concerning the offense or offenses that were part of the same course

176 of conduct or of a common scheme or plan, but the fact that the person has no relevant or useful other  
177 information to provide or that the Commonwealth already is aware of the information shall not preclude a  
178 determination by the court that the defendant has complied with this requirement.

179 H1. Any person who was the principal or one of several principal administrators, organizers or leaders of  
180 a continuing criminal enterprise shall be guilty of a felony if (i) the enterprise received at least \$100,000 but  
181 less than \$250,000 in gross receipts during any 12-month period of its existence from the manufacture,  
182 importation, or distribution of heroin or cocaine or ecgonine or methamphetamine or the derivatives, salts,  
183 isomers, or salts of isomers thereof or marijuana or (ii) the person engaged in the enterprise to manufacture,  
184 sell, give, distribute or possess with the intent to manufacture, sell, give or distribute the following during any  
185 12-month period of its existence:

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

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

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

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

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

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

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

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

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

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

205 H2. Any person who was the principal or one of several principal administrators, organizers or leaders of  
206 a continuing criminal enterprise if (i) the enterprise received \$250,000 or more in gross receipts during any  
207 12-month period of its existence from the manufacture, importation, or distribution of heroin or cocaine or  
208 ecgonine or methamphetamine or the derivatives, salts, isomers, or salts of isomers thereof or marijuana or  
209 (ii) the person engaged in the enterprise to manufacture, sell, give, distribute or possess with the intent to  
210 manufacture, sell, give or distribute the following during any 12-month period of its existence:

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

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

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

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

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

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

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

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

222 5. At least 250 grams of methamphetamine, its salts, isomers, or salts of its isomers or at least 1.0  
223 kilograms of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers,  
224 or salts of its isomers shall be guilty of a felony punishable by a fine of not more than \$1 million and  
225 imprisonment for life, which shall be served with no suspension in whole or in part. Such punishment shall be  
226 made to run consecutively with any other sentence. However, the court may impose a mandatory minimum  
227 sentence of 40 years if the court finds that the defendant substantially cooperated with law-enforcement  
228 authorities.

229 I. For purposes of this section, a person is engaged in a continuing criminal enterprise if (i) he violates any  
230 provision of this section, the punishment for which is a felony and either (ii) such violation is a part of a  
231 continuing series of violations of this section which are undertaken by such person in concert with five or  
232 more other persons with respect to whom such person occupies a position of organizer, a supervisory  
233 position, or any other position of management, and from which such person obtains substantial income or

234 resources or (iii) such violation is committed, with respect to methamphetamine or other controlled substance  
235 classified in Schedule I or II, for the benefit of, at the direction of, or in association with any criminal street  
236 gang as defined in § 18.2-46.1.

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

244 K. *In addition to any other penalties provided in this section, the penalty for any person who violates this*  
245 *section with respect to a mixture or substance containing detectable amounts of heroin, fentanyl, or*  
246 *carfentanil or the derivatives, salts, isomers, or salts of isomers thereof shall include a mandatory minimum*  
247 *fine as follows:*

248 1. *A mandatory minimum fine of \$500,000 for one gram or more but less than 14 grams of such mixture*  
249 *or substance;*

250 2. *A mandatory minimum fine of \$750,000 for 14 grams or more but less than 28 grams of such mixture or*  
251 *substance; and*

252 3. *A mandatory minimum fine of \$1 million for 28 grams or more of such mixture or substance.*

253 L. The term "methamphetamine precursor drug," when used in this article, means a drug or product  
254 containing ephedrine, pseudoephedrine, or phenylpropanolamine or any of their salts, optical isomers, or salts  
255 of optical isomers.

256 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
257 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**  
258 **appropriation is \_\_\_\_\_ for periods of imprisonment in state adult correctional facilities; therefore,**  
259 **Chapter 2 of the Acts of Assembly of 2024, Special Session I, requires the Virginia Criminal Sentencing**  
260 **Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of**  
261 **Virginia, the estimated amount of the necessary appropriation is \_\_\_\_\_ for periods of commitment to**  
262 **the custody of the Department of Juvenile Justice.**