



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill 655 (Patron—Durant)

LD#: 26101192

Date: 11/10/2025

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 725 of the Acts of Assembly of 2025, 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.¹ The proposal also specifies that a person who obtained such substance directly from, or pursuant to, a valid prescription or order of a practitioner is exempted from the prohibition.

The 2024 General Assembly expanded § 18.2-248.02 to prohibit allowing a minor or incapacitated person to be present during the manufacture or attempted manufacture of fentanyl. This change took effect on July 1, 2024; previously, the offense had been restricted to the manufacture or attempted manufacture of methamphetamine. This offense is a felony punishable by imprisonment for not less than ten nor more than forty years.

Analysis:

¹ 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.

According to the Virginia Department of Forensic Science (DFS), the number of the illicit synthetic opioid cases submitted to DFS increased steadily every year between 2011 and 2023, excepting 2018. Illicit synthetic opioid submissions increased from 4,671 in 2020 to 7,175 in 2023; however, the number of illicit synthetic opioid submissions dropped to 6,239 in 2024, a 13% decrease. Regarding the submitted cases, about 99% of illicit synthetic opioids are fentanyl or fentanyl analogs.²

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

According to Circuit Court Case Management System (CMS) data for fiscal year (FY) 2025, there were no convictions under § 18.2-248.02 for the manufacture or attempted manufacture of fentanyl in the presence of a child younger than 15 years of age. However, data are available regarding the number of individuals convicted of manufacturing methamphetamine in the presence of a child younger than 15 years of age. According to Circuit Court CMS data for FY2020 through FY2025, four individuals were convicted of manufacturing or attempted manufacturing of methamphetamine while a child younger than 15 years of age was present. In one case, this offense was the primary, or most serious, offense at sentencing. This individual was sentenced to a state-responsible (prison) term of 1.7 years. The primary offense for the remaining three offenders was manufacture of methamphetamine under § 18.2-248(C1).

Impact of Proposed Legislation:

State adult correctional facilities. By establishing a new criminal penalty associated with possession of fentanyl in the 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.

² Virginia Department of Forensic Science (2024). *Drug Cases Submitted to the Virginia Department of Forensic Science: Calendar Year 2024*. Retrieved November 7, 2025, from [2024DfsDrugReport_9-30-1.pdf](https://www.dfs.virginia.gov/2024DfsDrugReport_9-30-1.pdf).

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 725 of the Acts of Assembly of 2025, 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.

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