

Department of Planning and Budget 2022 Fiscal Impact Statement

1. Bill Number: HB108

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: McGuire

3. Committee: Courts of Justice

4. Title: Felony homicide; certain drug offenses, penalties.

5. Summary: Provides that a person is guilty of felony homicide pursuant to § 18.2-33(A) if the felonious act that resulted in the killing of one accidentally, contrary to the intention of the parties, involved the manufacture, sale, gift, or distribution of a Schedule I or II controlled substance to another person, and such person's death resulted from the use of such substance and the substance was the proximate cause of the person's death, regardless of the time or place the death occurred in relation to the commission of the manufacture, sale, gift, or distribution. The bill also provides that it is not a defense to a prosecution under this section that the decedent contributed to his own death by his knowing or voluntary use of the controlled substance. However, if a person proves that he gave or distributed a controlled substance only as an accommodation to another individual who is not incarcerated, and not with intent to profit thereby or to induce the recipient of the controlled substance to use, become addicted, or to become dependent upon the controlled substance, he is guilty of a Class 5 felony.

6. Budget Amendment Necessary: Yes. Item 404.

7. Fiscal Impact Estimates: Preliminary. See Item 8 below.

8. Fiscal Implications: The proposed legislation expands the applicability of felony homicide violations, punishable by confinement in a state correctional facility for between five and 40 years, to include deaths that result from the manufacture, sale, gift, or distribution of Schedule I or II controlled substances. The bill also creates a new Class 5 felony in cases where a death resulted from the drugs that were distributed to an individual only as an accommodation. A Class 5 felony is punishable by a term of imprisonment of not less than one year nor more than 10 years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

According to data from the Office of the Chief Medical Examiner and analyzed by the Virginia Criminal Sentencing Commission, there were 1,486 deaths in the Commonwealth in 2018 as a result of drugs. This figure was 1,627 in 2019. The causes of death for these individuals included prescription drugs, over-the-counter drugs, illegal drugs, alcohol, inhalants, and other poisons.

According to Sentencing Commission data for FY 2014 through FY 2021, judges sentenced 27 individuals convicted of manufacturing, etc. a Schedule I or II drug to terms of incarceration that exceeded the Sentencing Guidelines' recommendations, and cited a death as the reason for the enhanced sentence. All of these individuals received a state-responsible (prison) term with a median sentence of five years. There may have been additional cases during that time period in which the manufacture, etc. of a drug was associated with a death, but additional cases could not be identified with available data.

According to Sentencing Guidelines Database information for FY 2020 and FY 2021, 20 individuals were convicted of felony murder under § 18.2-33. The murder was the primary, or most serious, offense in 18 of those cases. All of the offenders were sentenced to prison, with a median sentence of 17 years. The data for these cases do not indicate that the deaths were associated with the use of drugs; the data does reveal that none of these individuals was also charged with a felony drug offense.

By expanding the applicability of felony homicide to additional circumstances beyond what is currently allowed by law, the proposal is expected to result in a net increase in periods of imprisonment in state prisons. Thus, the proposal will likely increase the future prison bed space needs of the Commonwealth above what would otherwise be needed. The impact is estimated to be at least one bed statewide by FY 2028. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$46,751.

The proposal is not anticipated to impact local-responsible (jail) bed space needs, as all of the identified offenders who could be affected by the proposed change received a prison term. Any potential fiscal impact on the Department of Juvenile Justice as a result of this proposed bill is indeterminate at this time.

9. Specific Agency or Political Subdivisions Affected: Law enforcement, Department of Corrections, Courts, local and regional jails, Commonwealth's Attorneys, Indigent Defense Commission, and Department of Juvenile Justice.

10. Technical Amendment Necessary: No.

11. Other Comments: None.