

## Department of Planning and Budget

### 2022 Fiscal Impact Statement

**1. Bill Number:** HB1356H1

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

**2. Patron:** Anderson

**3. Committee:** Courts of Justice

**4. Title:** Manufacturing, selling, giving, distributing or possessing with intent to manufacture, sell.

**5. Summary:** Provides that it is unlawful for a person to transport into the Commonwealth with intent to sell or distribute 100 milligrams or more of any mixture or substance containing a detectable amount of fentanyl. The bill also provides that any person who sells, gives, or distributes a substance he knows or should know contains two milligrams or more of any mixture or substance containing a detectable amount of fentanyl to another person without that person's knowledge, is guilty of attempted second degree murder. If the sale, gift, or distribution results in the death of the other person from his use of such substance, the person who sold, gave, or distributed it is guilty of second degree murder.

**6. Budget Amendment Necessary:** Yes. Item 404.

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

**8. Fiscal Implications:** This bill is not anticipated to have a fiscal impact on the Department of Forensic Science.

The proposed legislation expands § 18.2-248.01, pertaining to the transportation of controlled substances into the Commonwealth, by including mixtures or substances containing fentanyl. Currently, violations of this section are punishable by between five and 40 years of imprisonment, three of which shall be a mandatory minimum, and a fine not to exceed \$1,000,000. Second or subsequent convictions are punishable by a mandatory minimum term of imprisonment of 10 years, which must be served consecutively with any other sentence. The bill also expands the number of people who may be found guilty of murder or attempted murder in the second degree pursuant to §§ 18.2-26 and 18.2-32. Under § 18.2-32, felony homicide, constituting a second-degree murder, is punishable by imprisonment of between five and 40 years, and pursuant to § 18.2-26, an attempted second-degree felony murder is classified as a Class 4 felony, punishable by imprisonment of between two and 10 years.

According to data from FY 2020 through FY 2021 Sentencing Guidelines, as analyzed by the Virginia Criminal Sentencing Commission, among cases in which the manufacture, sale, distribution, etc. of Schedule I or II drugs is the most serious offense, approximately seven percent of the cases involved fentanyl. Because these data do not include the quantity of the

drug, data are insufficient to estimate the number of offenders who would be subject to the proposed criminal penalties specified in the bill for certain quantities of fentanyl. According to data from the Office of the Chief Medical Examiner, 1,486 individuals died in the Commonwealth in 2018 from 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.

Analysis of Sentencing Commission data for FY 2014 through FY 2021 indicates that judges sentenced 27 individuals who were convicted of manufacturing, etc. Schedule I or II drugs to terms of incarceration that exceeded Sentencing Guidelines recommendations and cited a death as the reason for doing so. All 27 received a state-responsible (prison) term with a median sentence of five years. There may have been other cases in this 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 the Sentencing Guidelines Database for FY 2020 and 2021, 98 individuals were convicted of second-degree murder under § 18.2-32. This was the primary, or most serious, offense in 86 cases. Of these, two of the offenders (2.3 percent) received probation or were sentenced to time served while awaiting trial. The remaining 84 offenders (97.7 percent) were sentenced to prison terms with a median sentence of 20 years. The data do not indicate that the deaths were associated with the use of drugs, and Sentencing Guidelines data shows that among those convicted of second-degree murder, none were also charged with a felony drug offense.

According to Supreme Court of Virginia Circuit Course Case Management System (CMS) data for FY 2020 and 2021, 14 individuals were convicted of transporting a drug other than cocaine into the Commonwealth. None were convicted of a second or subsequent violation of this statute. Of the 14, all were sentenced to prison terms with a median sentence of three years.

By establishing new criminal penalties and expanding existing ones, 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 quantified. Therefore, the Virginia Criminal Sentencing Commission has assigned a minimum fiscal impact of \$50,000 for this bill.

Any potential fiscal impact on the Department of Juvenile Justice or local-responsible (jail) bed space needs is indeterminate at this time.

**9. Specific Agency or Political Subdivisions Affected:** Department of Forensic Science, Department of Corrections, Department of Juvenile Justice, local and regional jails.

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** None.