



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1187

Amendment in the Nature of a Substitute

(Patron Prior to Substitute –Hodges)

LD#: 24106501

Date: 02/08/2024

Topic: Manufacturing, selling, etc. xylazine

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:**
Cannot be determined**
- **Juvenile Detention Facilities:**
Cannot be determined**

**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 1 of the Acts of Assembly of 2023, 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 adds § 18.2-251.5 to the *Code of Virginia* relating to xylazine. The proposal specifies that any person who knowingly manufactures, sells, gives, distributes, or possesses with the intent to manufacture, sell, give, or distribute the substance xylazine, when intended for human consumption, is guilty of a Class 5 felony.¹ Under the proposal, it would be a Class 1 misdemeanor for any person to knowingly possess the substance xylazine, when intended for human consumption. The proposal provides exceptions for legitimate veterinary practice.

According to the Board of Pharmacy, xylazine is currently a Schedule VI drug in Virginia.² It is a Class 1 misdemeanor to sell, distribute, etc., a Schedule VI drug and a Class 4 misdemeanor to possess such a drug.

The proposed penalties are equivalent to the current penalties prescribed in *Code* for Schedule III drugs.

Xylazine is approved for use in the field of veterinary medicine. According to the U.S. Drug Enforcement Agency (DEA), xylazine has been reported as an adulterant in an increasing number of illicit drug mixtures and has also been detected in a growing number of overdose deaths.³

¹ As proposed, the felony offense defined in § 18.2-251.5 is 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.

² E-mail communication from Caroline Juran, Board of Pharmacy, to Meredith Farrar-Owens. 8 November 2023.

³ U.S. Drug Enforcement Agency. (2022). *The Growing Threat of Xylazine and its Mixture with Illicit Drugs*. Retrieved from <https://www.dea.gov/sites/default/files/2022-12/The%20Growing%20Threat%20of%20Xylazine%20and%20its%20Mixture%20with%20Illicit%20Drugs.pdf>

Analysis:

Suspected controlled substances seized during an arrest are submitted to Virginia’s Department of Forensic Science (DFS) for analysis. According to the Department of Criminal Justice Services (DCJS), 1,079 submissions to DFS during calendar year (CY) 2022 were found to contain xylazine.⁴ DFS began requiring the reporting of xylazine in August 2021. Because xylazine is often found in a mixture with other drugs, it is uncertain how many additional felony convictions may result if the legislation is enacted. It is also unclear how judges may sentence defendants in cases in which xylazine is reported to be in a drug mixture.

Available data are insufficiently detailed to determine how many additional defendants may be convicted of the proposed offenses involving xylazine. If convicted, however, such individuals may be sentenced similarly to defendants currently convicted of existing offenses related to Schedule III drugs. According to fiscal year (FY) 2022 and FY2023 Sentencing Guidelines data, 164 offenders were convicted of a Class 5 felony under § 18.2-248(E1) for selling, etc., a Schedule III drug (as the primary, or most serious, offense at sentencing). Of these, nearly one-third (30.5%) received a state-responsible (prison) term for which the median sentence was 1.5 years. Another 36.0% received a local-responsible (jail) term with a median sentence of 4.0 months. The remaining 33.5% did not receive an active term of incarceration to serve after sentencing.

General District Court Case Management System (CMS) data for FY2022 and FY2023 indicate that 1,521 offenders were convicted of a Class 1 misdemeanor under § 18.2-250 for possession of a Schedule III substance. The majority (71.5%) of these offenders did not receive an active term of incarceration to serve after sentencing. The remaining 28.5% received a local-responsible (jail) term; the median sentence in these cases was 2.0 months.

Impact of Proposed Legislation:

State adult correctional facilities. The proposed legislation creates a new Class 5 felony for selling, giving, distributing, or possessing with the intent to manufacture etc. xylazine. If convicted, a defendant may receive a state-responsible (prison) sentence. Available data are insufficient, however, to identify the number of additional felony convictions that may result from the proposal or the extent to which judges may modify sentencing practices in cases involving the specified drug. Thus, the impact of the proposal on state prison beds cannot be quantified.

Local adult correctional facilities. Similarly, the proposal may increase the local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

Adult community corrections resources. 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 affected cannot be determined, the potential impact on community corrections cannot be estimated.

Virginia’s Sentencing Guidelines. As a new felony, convictions under the proposed § 18.2-251.5 would not be covered by the Sentencing Guidelines as the primary, or most serious, offense. A conviction under this provision, however, could augment the Guidelines recommendation (as an additional offense) if the most serious offense at sentencing is covered by the Guidelines. The proposed 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 detailed analyses of sentencing patterns under the new provision to determine the feasibility of adding the new felony to the Guidelines system.

⁴ Virginia Department of Criminal Justice Services, Criminal Justice Research Center. (2023). *Criminal Justice and Socioeconomic Trends*. Presented to the Offender Population Forecasting Technical Advisory Committee on 19 July 2023.

Juvenile direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

Juvenile detention facilities. According to the Department of Juvenile Justice, the impact of the proposal on the bed space needs of juvenile detention facilities cannot be determined.

Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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