

## Department of Planning and Budget 2021 Fiscal Impact Statement

1. **Bill Number:** HB2144

**House of Origin**     Introduced     Substitute     Engrossed

**Second House**     In Committee     Substitute     Enrolled

2. **Patron:** Miyares

3. **Committee:** Courts of Justice

4. **Title:** Felony homicide; certain drug offenses; penalty.

5. **Summary:** This proposal expands the definition of felony homicide. It provides that a person is guilty of felony homicide, punishable by confinement for not less than five nor more than 40 years, if the underlying felonious act that resulted in the accidental killing of another person involved the manufacture, sale, gift, or distribution of a Schedule I or II controlled substance and (i) such other person's death results from his use of the controlled substance and (ii) the controlled substance is the proximate cause of the person's death. The bill provides that the venue for prosecution is the locality where the felony violation occurred, where the use of the controlled substance occurred, or where the death occurred. The bill serves to overrule the decision of the Court of Appeals of Virginia in *Woodard v. Commonwealth*, 61 Va. App., 567, 739 S.E.2d 220 (2013), *aff'd*, 287 Va. 276, 754 S.E.2d 309 (2014).

6. **Budget Amendment Necessary:** Yes, Item 420.

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

8. **Fiscal Implications:** In *Woodard v. Commonwealth*, 61 Va. App., 567, 739 S.E.2d 220 (2013), *aff'd*, 287 Va. 276, 754 S.E.2d 309 (2014), the Virginia Court of Appeals held that a conviction under §18.2-33 (felony homicide) for a death caused by a controlled substance requires that the killing be so closely related in time, place, and casual connection as to be part of the same felonious criminal enterprise.

Under this proposal, any person involved in the manufacture, sale, gift, or distribution of a Schedule I or II controlled substance could be convicted of felony homicide if the recipient's use of the controlled substance was the proximate cause of the death regardless of the time or place the death occurred in the commission of the underlying felony. Felony homicide is punishable by imprisonment of 5 to 40 years.

Based on an examination of data for FY 2011 through FY 2020 by the Virginia Criminal Sentencing Commission (VCSC), 30 individuals (an average of 3 persons per fiscal year) convicted of manufacturing, distributing, etc., Schedule I or II drugs were sentenced to terms of incarceration in state prison that exceeded recommended sentencing guidelines with death cited as the reason for the upward departure. The median sentence was five years

imprisonment. Additionally, based on data for FY 2019 and FY 2020 from VCSC, 27 individuals were convicted of felony homicide and sentenced to a state-responsible (prison) terms, with a median sentence of 22 years. While the data does not indicate if these felony homicides were associated with the use of drugs, two of the 27 individuals were also charged with a felony drug offense.

Based on the above analysis, the proposal will likely increase the future state prison bed space needs of the Commonwealth above what would otherwise be needed. The impact is estimated to be at least five beds statewide by FY2027. Pursuant to §30-19.1:4 of the Code of Virginia, the Virginia Criminal Sentencing Commission estimates a fiscal impact of \$184,195 (the highest annual cost over the next six years).

The impact on the Department of Juvenile Justice cannot be determined at this time.

**9. Specific Agency or Political Subdivisions Affected:** Department of Corrections,  
Department of Juvenile Justice

**10. Technical Amendment Necessary:** No

**11. Other Comments:** None