

Department of Planning and Budget 2024 Session Fiscal Impact Statement

1. Bill Number: HB674

House of Origin	<input checked="" type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Enrolled

2. Patron: Obenshain

3. Committee: Courts of Justice

4. Title: Selling, giving, or distributing a substance containing fentanyl; penalties.

5. Summary: This bill provides that any person who sells, gives, or distributes a substance he knows contains two milligrams or more of any mixture or substance containing a detectable amount of fentanyl, including its isomers, esters, ethers, salts, and salts of isomers, to another person without such person's knowledge that the substance sold, given, or distributed contains fentanyl is guilty of attempted murder of the first degree by poison. The bill also provides that if such sale, gift, or distribution results in the death of the other person from his use of the substance containing fentanyl, then the person who sold, gave, or distributed the substance is guilty of murder of the first degree by poison.

6. Budget Amendment Necessary: Yes, Item 390.

7. Fiscal Impact Estimates: Preliminary, see Item 8 below.

8. Fiscal Implications: The proposal establishes additional criminal penalties for offenders who sell, give, or distribute fentanyl. Under the proposal, any person who sells, gives, or distributes a substance he knows contains two milligrams or more of any mixture or substance containing a detectable amount of fentanyl, including its isomers, esters, ethers, salts, and salts of isomers, to another person, without such person's knowledge that it contains fentanyl, is guilty of attempted first-degree murder. If such sale, gift, or distribution results in the death of the other person from his use of the substance containing fentanyl, then the person who sold, gave, or distributed the substance is guilty of first-degree murder. A violation of this section would constitute a separate and distinct offense. The provisions of this section do not preclude prosecution under any other statute.

Currently, manufacture, sale, distribution, or possession with intent to distribute a Schedule I or II drug, such as fentanyl, is a felony punishable by imprisonment of 5 to 40 years. Completed first-degree murder is a Class 2 felony punishable by 20 years to life, while attempted first-degree murder is classified as a Class 4 felony, punishable by imprisonment of 2 to 10 years.

This 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. The proposal may impact the local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 1, 2023 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

Additionally, there is not enough information available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$5.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail and \$15.00 a day for each state-responsible prisoner. It also funds a considerable portion of the jails' operating costs, e.g., correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2023), the estimated total state support for local jails averaged \$45.76 per inmate, per day in FY 2022.

9. Specific Agency or Political Subdivisions Affected: Courts, local and regional jails, Commonwealth's Attorneys, Office of Public defenders, state and local law enforcement agencies, and Department of Corrections.

10. Technical Amendment Necessary: No.

11. Other Comments: None.