



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1093

(Patron – Moran)

Date Submitted: 01/07/04

LD #: 04-0184100

Topic: Abuse and neglect of incapacitated adults

Proposed Change:

The proposed legislation amends § 18.2-369, relating to the abuse and neglect of incapacitated adults, to include financial exploitation. The proposal defines financial exploitation as (1) an intentional breach of a fiduciary obligation to the incapacitated adult that is to the detriment of such adult, (2) intentionally failing to use the financial resources of the incapacitated adult causing the neglect of such adult, (3) in the absence of legal authority, the acquisition, possession or control of financial resources or property of value of the incapacitated adult through the use of undue influence, harassment or duress and the use or expenditure of such resources or property that results in or is likely to result in the financial detriment of such adult, or (4) in the absence of legal authority, forcing, compelling, coercing or enticing an incapacitated adult against his will to pay for goods or services or perform services for the profit or advantage of another.

The proposal also increases the penalty for several offenses. Under the proposal, the penalty for violation of this statute increases from a Class 1 misdemeanor to a Class 6 felony when such an act does not result in serious bodily injury or disease to the victim. The penalty for a second or subsequent conviction increases from a Class 6 felony to a Class 5 felony. However, if the act does result in serious bodily injury or disease to the victim, the penalty increases from a Class 6 felony to a Class 4 felony.

Data Analysis:

According to the fiscal year (FY) 2000 and FY2001 Pre/Post-Sentence Investigation (PSI) database, one offender was convicted under § 18.2-369 (as the primary offense) for abuse or neglect of an incapacitated adult resulting in serious bodily injury or disease; this offender was sentenced to serve two years in prison. There were no felony convictions for a second or subsequent violation of this statute.

According to fiscal year (FY) 2001 and FY2002 Local Inmate Data System (LIDS) data, four offenders held pre- or post-trial in jail were convicted of misdemeanor abuse or neglect of an incapacitated adult. Of these, three (75%) were sentenced to local-responsible (jail) terms with a median sentence of 5 days. The fourth offender, convicted of additional charges, was sentenced to two years imprisonment.

The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.

Impact of Proposed Legislation:

The proposed legislation expands § 18.2-369, pertaining to the abuse and neglect of incapacitated adults, to include financial exploitation. It also increases the penalty level for offenses defined in § 18.2-369.

For these reasons, the proposal may have an impact on the state-responsible (prison) bed space needs of the Commonwealth. Data are insufficient to determine the number of cases involving financial exploitation of incapacitated adults that may result in conviction under the expanded § 18.2-369. However, the impact of the penalty increases included in the proposal can be assessed. For this aspect of the proposal, application of sentences for similar crimes indicates that the net high state-responsible impact would be at least one partial bed by FY2010.

In addition, there will be an impact on local-responsible (jail) bed space; based on the methodology, there will be a reduced need of less than one bed statewide, for a savings to the state of \$8,374 (using FY2002 jail inmate costs) for reimbursement to localities. There would be an additional savings for the localities of \$5,699 for the same partial bed.

The anticipated impact on community corrections programs is unknown because sufficient data are not available to calculate the impact on such programs. However, it is expected to increase the need for probation services from both state and local programs.

Convictions under § 18.2-369 are not currently covered by the sentencing guidelines as the primary (most serious) offense but augment the guidelines recommendation when a covered offense is the most serious at conviction. No adjustment to the guidelines would be necessary under the proposal.

Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY05	FY06	FY07	FY08	FY09	FY10
0	0	0	1	1	1

Estimated Six-Year Impact in Local-Responsible (Jail) Beds

FY05	FY06	FY07	FY08	FY09	FY10
0	-1	-1	-1	-1	-1

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$11,929 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

Assumptions underlying the analysis include:**General Assumptions**

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary's Committee on Inmate Forecasting in 2003.
2. New cases representing state-responsible sentences were based on forecasts developed for the Secretary's Committee on Inmate Forecasting and approved in August 2003.

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3. Cost per prison bed was assumed to be \$22,606 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.***
4. Cost per jail bed was based on The Compensation Board's FY2002 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$29.81 per day or \$10,889 per year. The local cost was calculated by using the daily expenditure cost of \$54.12 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$20.29 per day or \$7,410 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.***

Assumptions relating to sentence lengths

1. The impact of the proposed legislation on criminal provisions, which would be effective on July 1, 2004, is phased in to account for case processing time.
2. The bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2002; for nonviolent offenses the rate was 9.54%. Release dates for local-responsible felony convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by felons sentenced in FY2003 to local jails; this rate was 89.7%. Release dates for local-responsible misdemeanor convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by misdemeanants sentenced in FY2003 to local jails; this rate was 39.66%.
3. Sentences for persons convicted of the misdemeanor version of § 18.2-369 were randomly assigned from sentences for all Class 6 child abuse offenses.

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