



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 192

(Patron – Reynolds)

Date Submitted: 12/17/03

LD #: 04-0889808

Topic: Embezzlement by public officials

Proposed Change:

The proposal adds § 18.2-112.1 to make it a Class 4 felony for any officer, agent or employee of the Commonwealth or any subdivision or authority thereof, to knowingly misuse or misappropriate or unlawfully dispose of any public funds that he has access to or knows of because of his position as an officer, agent or employee. The proposed crime would carry a mandatory, minimum sentence of one-year incarceration for each \$50,000 misused, misappropriated or disposed of unlawfully.

Currently, under § 18.2-112 it is a Class 4 felony for any officer, agent or employee of the Commonwealth or any subdivision thereof, or a deputy of any such officer, to knowingly misuse or misappropriate or unlawfully dispose of any public funds or other funds coming into his custody under his official capacity. No mandatory minimum currently exists for this crime. In addition, § 18.2-111 defines the crime of embezzlement, but is not limited to public officials. Under § 18.2-111, embezzlement of \$200 or more is a felony punishable by a term of 1 to 20 years, while embezzlement of less than \$200 is punishable as a Class 1 misdemeanor.

Convictions under § 18.2-111 and § 18.2-112 are covered by the sentencing guidelines as the primary, or most serious, offense.

Data Analysis:

Based on fiscal year (FY) 2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, seven public officials were convicted under the existing § 18.2-112. Of these, five were sentenced to probation without an active term of incarceration, one received a local-responsible (jail) sentence of two months, and one received a state-responsible sentence of one year. Existing data do not provide detail on the amount of monies involved in these cases.

Impact of Proposed Legislation:

The proposal expands provisions relating to embezzlement by a public official from misuse of funds “in his custody under his official capacity” to misuse of funds to which “he has access or knows of because of his position.” The proposal also introduces a one-year mandatory, minimum sentence for each \$50,000 misused. For these reasons, the proposed legislation may have an impact on state-responsible

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.

(prison) beds. However, criminal justice databases available to the Commission do not contain information on the number of convictions that may accrue under the proposed statute or the number of cases involving \$50,000 or more. Therefore, the magnitude of the expected impact cannot be computed from existing data sources.

Any impact on the state-responsible (prison) bed space needs of the Commonwealth may result in a partially offsetting impact on local-responsible (jail) bed space. The state's share for a jail inmate is about half (52%) of the cost for a prison inmate for the same length sentence.

No adjustment to the sentencing guidelines would be necessary under the proposal.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

embezzle01_0889