



## Impact Analysis on Proposed Legislation

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### *Virginia Criminal Sentencing Commission*

#### **Senate Bill No. 192**

#### *Amendment in the Nature of a Substitute (Patron Prior to Substitute – Reynolds)*

**Date Submitted:** 2/23/04

**LD #:** 04-0219808

**Topic:** Embezzlement by public officials

#### **Proposed Change:**

The proposed legislation amends § 18.2-112 regarding the embezzlement of funds by public officials. The proposal stipulates that any person convicted under this section shall be sentenced to a mandatory, minimum term of one year of 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.

#### **Data Analysis:**

Based on fiscal year (FY) 2002 and FY2003 Sentencing Guidelines data, nine offenders were sentenced under the existing § 18.2-112. Of these, three (33%) were sentenced to probation without an active term of incarceration, five (56%) received local-responsible (jail) sentences, and one (11%) received a state-responsible (prison) sentence of two years.

For seven of the nine cases identified, the amount of restitution ordered by the court is known. Restitution figures ranged from \$75 to almost \$202,000, with the latter case being the only known case to exceed the proposed threshold for the mandatory minimum provision.

#### **Impact of Proposed Legislation:**

The proposal expands provisions relating to embezzlement by a public official by introducing a one-year mandatory, minimum sentence for each \$50,000 misused. However, criminal justice databases available to the Commission do not contain information on the exact amount of funds involved in these

types of cases. While the magnitude of the expected impact cannot be computed from existing data sources, it is expected to be small.

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.

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

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