Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 320
Engrossed Substitute with Amendments
(Patron – Stolle)

Date Submitted: 1/27/04   **LD #:** 04-1164104

Topic: Virginia Racketeer Influenced and Corrupt Organization Act

Proposed Change:
This proposal amends §§ 2.2-511, 6.1-375, 19.2-10.1 and 58.1-1017 of the *Code of Virginia* and adds Chapter 13 in Title 18.2, consisting of §§ 18.2-511 through 18.2-516, relating to the Virginia Racketeer Influenced and Corrupt Organization (RICO) Act. Among other things, the proposed legislation:

- Amends § 2.2-511 giving the Attorney General authority to conduct criminal prosecutions in circuit courts of the Commonwealth in cases involving violations of the Virginia RICO Act;
- Amends § 6.1-375 to remove the provision that any person who sells money orders or illegally engages in the business of money transmission without a license is guilty of a Class 1 misdemeanor. This offense was upgraded from a Class 3 misdemeanor in 2001 and would be elevated to a Class 5 felony under the proposed § 18.2-515 of Virginia's RICO Act.
- Prohibits any enterprise (sole proprietorship, partnership, business trust, criminal street gang, etc.) from engaging in racketeering activity or using proceeds derived from such activity to acquire or maintain any interest in or control of any other enterprise or real property. Violations of these provisions would be felonies punishable by imprisonment from 5 to 40 years and a fine of up to $1 million. A second or subsequent offense would be punishable as a Class 2 felony, with a fine of up to $2 million.
- Prohibits illegal money transmitting businesses. Any person who knowingly participates in such a business would be guilty of a Class 5 felony.
- Amends § 19.2-10.1 setting conditions for the disclosure of records by a financial institution as defined in § 6.1-125.1, a money transmitter as defined in § 6.1-370, or a commercial business providing credit history or credit reports pursuant to a subpoena duces tecum;
- Amends § 58.1-1017 to increase the penalty for the unlawful sale, purchase or possession of cigarettes for the purpose of evading the payment of taxes from a Class 2 misdemeanor to a Class 6 felony.

Currently, racketeering is not specifically defined in the *Code of Virginia*; however, federal *Code* does contain RICO provisions.

Data Analysis:
According to fiscal year (FY) 2001 and FY2002 Local Inmate Data System (LIDS) data, there were no misdemeanor convictions for illegally engaging in monetary transmissions or sale of money orders without a license under § 6.1-375. There were also no convictions for the unlawful sale, purchase or possession of cigarettes under § 58.1-1017.

Impact of Proposed Legislation:
The proposed legislation may have an impact on state-responsible (prison) beds. The proposal creates a number of new offenses not currently specified in the *Code* and elevates two misdemeanor offenses to felonies. However, the extent of the impact, if any, cannot be determined with existing criminal justice databases. Therefore, the magnitude of any impact cannot be quantified. Similarly, the impact on jails and community corrections cannot be quantified.

Convictions under the proposed legislation would not be covered by the guidelines as the primary, or most serious, offense but could augment the guidelines recommendation if a covered offense is the most serious at conviction. 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.

racketeer04_1164

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.