



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 2459

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

**LD#:** 07-7811268

**Date:** 1/18/2007

**Topic:** Crimes committed against incapacitated adults

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
Cannot be determined
- **Local Adult Correctional Facilities:**  
Cannot be determined
- **Adult Community Corrections Programs:**  
None

- **Juvenile Correctional Centers:**  
Cannot be determined
- **Juvenile Detention Facilities:**  
Cannot be determined

#### Summary of Proposed Legislation:

The proposal amends several statutes as they apply to incapacitated adults. There are two major areas that are being addressed.

First, the proposal revises penalties for larceny, embezzlement and fraud when the victim is someone the offender knew, or reasonably should have known, is an incapacitated adult. The current penalty for felony larceny (§ 18.2-95) or felony embezzlement (§ 18.2-111) is imprisonment of 1 to 20 years or, in the discretion of the jury or court trying the case without a jury, confinement in jail for up to 12 months or a fine not exceeding \$2,500, either or both. Under the proposal, the penalty for felony larceny or felony embezzlement committed against an incapacitated adult would be imprisonment of 1 to 20 years. The penalty for a forgery (§ 18.2-172) is raised from a Class 5 to a Class 4 felony when the victim is an incapacitated adult.

Second, the proposal amends § 18.2-369 to create a new felony offense related to the abuse and neglect of an incapacitated adult. Under the proposal, any responsible person who abuses or neglects an incapacitated adult and the abuse or neglect results in the death of the adult is guilty of a Class 3 felony.

Currently, under § 18.2-369, abuse or neglect of an incapacitated adult that does not result in serious bodily injury or disease is punishable as a Class 1 misdemeanor. A second or subsequent abuse or neglect offense is punishable as a Class 6 felony. If the abuse or neglect of the incapacitated adult results in serious bodily injury or disease, the offender is guilty of a Class 4 felony.

#### Analysis:

According to fiscal year (FY) 2005 and FY2006 Sentencing Guidelines data, 7,332 offenders were convicted of a felony for larceny, embezzlement, or forgery. Sentencing information for these crimes is shown below. For offenders who had no other offenses at conviction, one offender (convicted of embezzlement) was sentenced to the statutory maximum penalty of twenty years allowed by current law.

The number of larceny, embezzlement and fraud cases that involved crimes committed against incapacitated adults cannot be identified.

### FY2005 and FY2006 Felony Sentencing Information

Felony Offense	Total Cases	Disposition				
		No Active Incarceration	Local-Responsible (Jail)		State-Responsible (Prison)	
		% of Cases	% of Cases	Median Sentence	% of Cases	Median Sentence
§ 18.2-95(ii) – Larceny of \$200 or more (not from person)	4,178	34.6%	39.2%	4 mos.	26.1%	2 yrs.
§ 18.2-95(i) – Larceny of \$5 or more (from person of another)	507	30.0%	37.1%	5 mos.	32.7%	2 yrs.
§ 18.2-111 – Embezzlement of \$200 or more	1,217	55.8%	32.5%	2 mos.	11.8%	2 yrs.
§ 18.2-172 – Forgery	1,430	36.7%	32.4%	6 mos.	30.9%	1.7 yrs.

Note: Sentence data reflects the total effective sentence (imposed less suspended time) given for all offenses in the same sentencing hearing. The median sentence is the middle value, above and below which lie an equal number of cases.

Data Source(s): Sentencing Guidelines (SG) database.

Based on the Local Inmate Data System (LIDS) for calendar years (CY) 2004 and CY2005, two offenders held pre- or post-trial in jail were convicted of a felony under § 18.2-369 for abuse or neglect of an incapacitated adult that resulted in serious bodily injury or disease (Class 4 felony). One offender was sentenced to a local responsible (jail) term of one month; the other offender was sentenced to a state responsible (prison) sentence of 1.5 years.

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### Impact of Proposed Legislation:

**State adult correctional facilities.** Because it revises or increases the penalties for certain felonies committed against incapacitated adults, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The number of applicable cases involving incapacitated adults cannot be identified. In addition, under the proposed penalties, judges could suspend part or all of the sentence imposed for the offense and the impact of the proposal on judicial sentencing practices is unknown. For these reasons, the impact of the proposal on prison bed space needs cannot be determined.

**Local adult correctional facilities.** The proposal may increase local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

**Adult community corrections resources.** Because judges will likely not add further community supervision requirements for these convicted felons, the proposal is not expected to increase the need for adult community corrections resources.

**Virginia's sentencing guidelines.** The existing felony offenses affected by the proposal are already covered by the sentencing guidelines. The new felony offense related to the abuse and neglect of an incapacitated adult resulting in death would not be covered; however, convictions under this statute may augment the guidelines recommendation if a covered offense is the most serious at conviction. No adjustment to the guidelines would be necessary under the proposal.

**Juvenile correctional centers.** According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional centers cannot be quantified.

**Juvenile detention facilities.** The Department of Juvenile Justice (DJJ) reports that the proposal's impact on juvenile detention facilities cannot be determined.

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**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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

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