



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1099

(Patron – Herring)

LD#: 09-8013240

Date: 12/17/2008

Topic: Financial exploitation of incapacitated adults

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
None (\$0)

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

Summary of Proposed Legislation:

The proposal adds § 18.2-213.2 to define and establish penalties for crimes involving the financial exploitation of incapacitated adults. The proposal defines financial exploitation as knowingly and willfully using or taking (or assisting another to use or take) an incapacitated adult's real or personal property or other thing of value with the intent to defraud or with the intent to temporarily or permanently deprive the incapacitated adult of the property or value. Under the proposal, any person responsible for the care, custody or control of an incapacitated adult who financially exploits that person is guilty of a Class 1 misdemeanor if the value involved is less than \$200 in any six-month period and a Class 6 felony if the value is \$200 or more in any six-month period.

Analysis:

According to fiscal year (FY) 2007 and FY2008 Sentencing Guidelines data, 7,749 offenders were convicted of a felony for larceny, embezzlement, forgery or obtaining money by false pretenses. Sentencing information for these crimes is shown below. The number of cases involving financial exploitation of incapacitated adults cannot be identified.

FY2007 and FY2008 Sentencing Guidelines 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)	4,261	35%	38%	4 mos.	27%	1.9 yrs.
§ 18.2-111 – Embezzlement of \$200 or more	1,429	57%	33%	2 mos.	10%	2.0 yrs.
§ 18.2-172 – Forgery	1,090	39%	30%	6 mos.	31%	1.7 yrs.
§ 18.2-178 – Obtaining money by false pretense >=\$200	969	40%	29%	7 mos.	31%	1.9 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.

Impact of Proposed Legislation:

State adult correctional facilities. Because it defines a new felony, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, the number of cases involving financial exploitation of incapacitated adults cannot be identified. It is likely that most of the offenders affected by the proposal can be prosecuted under existing larceny and fraud provisions. For offenders also convicted of the proposed felony, the impact on judicial sentencing practices is unknown. Judges could suspend part or all of the sentence imposed for the proposed offense or set the sentence to run concurrently with the sentences for other offenses. For these reasons, the impact of the proposal on prison bed space needs cannot be determined.

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

Adult community corrections resources. As it is likely that most of the offenders affected by the proposal can be prosecuted under existing larceny and fraud provisions, judges will likely not add additional community supervision requirements for these convicted felons; therefore, the proposal is not expected to increase the need for adult community corrections resources.

Virginia's sentencing guidelines. As a new felony, a conviction under the proposed § 18.2-213.2 would not be covered by the sentencing guidelines as the primary (most serious) offense at conviction. 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 proposal is not expected to increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

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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