



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2473 (Patron – Marshall, R.G.)

LD#: 11104507

Date: 1/24/2011

Topic: Making or using a false or fraudulent record, etc., in support of a foreclosure

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Programs:**
None (\$0)

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

Summary of Proposed Legislation:

The proposal modifies several sections of the *Code of Virginia* relating to foreclosure procedures. The proposal also adds § 55-59.6, which establishes a civil penalty for making, using or causing to be made or used a false or fraudulent record, document, or statement or swearing or affirming to any matter in support of any foreclosure upon property under Chapter 4 of Title 55 knowing the same to be false or fraudulent. The proposal authorizes attorneys for the county, city, or town in which an alleged violation occurred to bring action to recover the civil penalty. Under the proposal, the owner of the property subject to foreclosure may bring a civil action against the individual who perpetrated the fraud to receive compensatory damages, punitive damages, and attorneys fees. The proposal states that the civil penalties shall apply in addition to applicable criminal penalties for forgery under §§ 18.2-168 and 18.2-172, perjury under § 18.2-434, or any other criminal penalty.

Analysis:

According to fiscal year (FY) 2009 and FY2010 Sentencing Guidelines data, 892 offenders were sentenced for forgery or uttering of a public record under § 18.2-186 as the primary, or most serious, offense. While one-third (33.6%) of these offenders did not receive an active term of incarceration, 38.5% were given a local-responsible (jail) term, for which the median sentence was seven months. For the remaining 27.9% who received a state-responsible (prison) term, the median sentence was 1.4 years. An additional 1,249 offenders were sentenced for forgery or uttering in violation of § 18.2-172 (as the primary offense). Of these offenders, 38.9% did not receive an active term of incarceration and 33% were sentenced to a local-responsible (jail) term, with a median sentence length of six months. The median sentence length for the 28.1% of offenders who were sentenced to a state-responsible (prison) term was 1.6 years.

Sentencing Guidelines data for FY2009 and FY2010 also indicate that 71 offenders were sentenced for falsely swearing an oath under § 18.2-434 (as the primary offense). More than half (52.1%) of these

offenders did not receive an active term of incarceration. More than one-third (35.2%) were sentenced to a local-responsible term with a median sentence length of seven months. The remaining 12.7% received a state-responsible term with a median sentence of 1.3 years. According to the Circuit Court Automated Information System (CAIS) for FY2009 and FY2010, five offenders were convicted of falsely subscribing as true a written declaration in violation of § 18.2-434. While four (80%) of these offenders did not receive an active term of incarceration to serve after sentencing, one offender received a jail term of two months.

Impact of Proposed Legislation:

State adult correctional facilities. The proposed § 55-59.6 only specifies civil remedies and does not modify existing criminal penalties. In addition, the proposal does not expand the number or type of behaviors eligible for criminal prosecution. As a result, it is unlikely that it will impact the future state-responsible (prison) bed space needs of the Commonwealth.

Local adult correctional facilities. Similarly, the proposal is not expected to increase local-responsible (jail) bed space needs.

Adult community corrections programs. The proposal is not expected to affect adult community corrections resources.

Virginia's sentencing guidelines. The sentencing guidelines cover one perjury offense under § 18.2-434 as well as violations of §§ 18.2-168 and 18.2-172 that are processed in Virginia's circuit courts. 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 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 is \$0 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.