



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1195

Amendment in the Nature of a Substitute (Patrons Prior to Substitute – Obenshain and Reynolds)

LD#: 11104800

Date: 2/10/2011

Topic: Illegal gambling

Fiscal Impact Summary:

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

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

Summary of Proposed Legislation:

The proposed legislation amends §§ 18.2-325 and 18.2-325.1 of the *Code of Virginia* regarding “illegal gambling.” The proposal amends § 18.2-325 to clarify that the purchase of a product or other thing of value (e.g., phone card, Internet time), which credits the purchaser with free points or other measurable units that may be risked by the purchaser for an opportunity to win money, is deemed “consideration” for the purposes of illegal gambling. It also expands the definition of a “gambling device” to include electronic or video versions of any machine (coin-operated or otherwise), apparatus, or other device which may be used in an illegal gambling operation. The proposal amends § 18.2-325.1 to clarify that the conduct of a game, contest, lottery, scheme, or promotional offering may be lawful if (i) no part of the purpose of the contest is illegal gambling, (ii) no part of the contest involves the use of a gambling device, and (iii) the contest complies with certain requirements enumerated in the bill. Language in the proposal states that it is declaratory of existing law.

Currently, the operator of an illegal gambling operation is guilty of a Class 6 felony under § 18.2-328; however, the operator of any such enterprise which (i) has been in continuous operation for more than thirty days or (ii) has gross revenue of \$2,000 or more in any single day is subject to imprisonment of 1 to 10 years and a fine up to \$20,000. It is a Class 1 misdemeanor for any owner, tenant or other occupant of any place or conveyance to knowingly allow illegal gambling (§ 18.2-329), for any person or association to knowingly aid or assist in an illegal gambling operation (§ 18.2-330), or for any person to possess a gambling device used in unlawful gambling activity (§ 18.2-331). Any person who illegally gambles is guilty of a Class 3 misdemeanor, punishable by a fine only (§ 18.2-326); however, any person who wins by fraud or cheating while gambling may receive a fine of 5 to 10 times the value of his/her winnings (§ 18.2-327). Any person who fraudulently enters a participant (man, animal, fowl, or vehicle) in a contest of speed or skill is also guilty of a Class 3 misdemeanor (§ 18.2-333).

Analysis:

According to fiscal year (FY) 2009 and FY2010 data from the Circuit Court Automated Information System (CAIS), four offenders were convicted of a felony under § 18.2-328 for operating an illegal gambling operation; all four were sentenced to probation. Additionally, five other offenders were charged with a felony under the same statute, but the charges were reduced to Class 1 misdemeanors under other gambling statutes; all five were sentenced to probation.

According to FY2009 and FY2010 data from the General District Court Automated Information System (CAIS), 27 offenders were convicted of Class 1 misdemeanor gambling-related offenses under §§ 18.2-329, 18.2-330, and 18.2-331. Of these, only four received jail terms (6 days, 20 days, 1 month, and 12 months, respectively). Additionally, 95 offenders were convicted of offenses punishable by a fine only under §§ 18.2-326, 18.2-327, and 18.2-333.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal is not expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. The proposed legislation adds language clarifying the act of illegal gambling and expanding the definition of a gambling device. According to available data, however, there were only four felony convictions under existing gambling provisions during a recent two-year period and none of the offenders convicted of a felony gambling offense received a prison sentence.

Local adult correctional facilities. The proposal could increase the future local-responsible (jail) bed space needs of the Commonwealth. However, recent data reveal that only 15% of offenders convicted of a Class 1 misdemeanor gambling-related offense received an active term of incarceration to serve after sentencing. While the impact of the proposal on jail beds cannot be quantified, it is likely to be negligible.

Adult community corrections resources. The proposal may increase the need for state community corrections resources. Nonetheless, the impact is likely to be negligible.

Virginia's sentencing guidelines. None of the convictions affected by the proposal are covered by the sentencing guidelines as the primary (most serious) offense in a case; however, convictions for any of these crimes may augment the guidelines recommendation if a covered offense is the most serious at sentencing. 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.