



## Impact Analysis on Proposed Legislation

---

### *Virginia Criminal Sentencing Commission*

---

#### House Bill No. 28 (Patron – Marshall)

**LD#:** 12100425

**Date:** 11/28/11

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

#### **Fiscal Impact Summary:**

- |   |   |
|---|---|
| <ul style="list-style-type: none"><li>• <b>State Adult Correctional Facilities:</b><br/>None (\$0)</li><li>• <b>Local Adult Correctional Facilities:</b><br/>None (\$0)</li><li>• <b>Adult Community Corrections Programs:</b><br/>None (\$0)</li></ul> | <ul style="list-style-type: none"><li>• <b>Juvenile Correctional Centers:</b><br/>None (\$0)</li><li>• <b>Juvenile Detention Facilities:</b><br/>None (\$0)</li></ul> |
|---|---|



---

#### **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 of \$5,000 for each violation for knowingly making, using or causing to be made or used a false or fraudulent record, document, or statement or knowingly swearing or affirming falsely to any matter in support of any foreclosure upon property under Chapter 4 of Title 55 of the *Code*. The proposal authorizes Commonwealth attorneys and city or county attorneys 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 attorney's 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) 2010 and FY2011 Sentencing Guidelines data, 831 offenders were sentenced for forgery or uttering of a public record under § 18.2-168 as the primary, or most serious, offense. While one-third (33%) of these offenders did not receive an active term of incarceration, 40% were given a local-responsible (jail) term, for which the median sentence was seven months. For the remaining 27% who received a state-responsible (prison) term, the median sentence was 1.5 years. An additional 1,071 offenders were sentenced for forgery or uttering in violation of § 18.2-172 (as the primary offense). Of these offenders, 40% 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 27% of offenders who were sentenced to a state-responsible (prison) term was 1.5 years.

Sentencing Guidelines data for FY2010 and FY2011 also indicate that 85 offenders were sentenced for falsely swearing an oath under § 18.2-434 (as the primary offense). Almost half (46%) of these offenders did not receive an active term of incarceration. Another 43% were sentenced to a local-responsible term with a median sentence length of just less than seven months. The remaining 11% received a state-responsible term with a median sentence of 1.3 years. According to the Circuit Court Automated Information System (CAIS) for FY2010 and FY2011, six offenders were convicted of falsely subscribing as true a written declaration in violation of § 18.2-434. While five (83%) of these offenders did not receive an active term of incarceration to serve after sentencing, one offender received a prison term of three years.

Data are not available to identify the number of incidents involving foreclosures that could be subject to the proposed provisions.

---

**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.**