



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 982

(Patron – Scott)

LD#: 12100665

Date: 12/07/2011

Topic: Crimes against incapacitated adults

#### Fiscal Impact Summary:

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

- **Juvenile Correctional Centers:**  
Cannot be determined, likely to be minimal
- **Juvenile Detention Facilities:**  
Cannot be determined, likely to be minimal

#### Summary of Proposed Legislation:

The proposed legislation adds § 18.2-504.2 regarding crimes against incapacitated adults. Under the proposal, any person who knowingly commits an offense set forth in Chapter 4 (Crimes Against the Person, § 18.2-30 et seq.), Chapter 5 (Crimes Against Property, § 18.2-77 et seq.), or Chapter 6 (Crimes Involving Fraud, § 18.2-168 et seq.) of Title 18.2 of the *Code of Virginia*, against an incapacitated adult is guilty of a separate and distinct Class 1 misdemeanor. However, if the offender is responsible for the care, custody, or control of the victim, punishment for the proposed misdemeanor must include a mandatory minimum term of confinement of 30 days if the underlying offense is a misdemeanor and a mandatory minimum of six months if the underlying offense is a felony.

The proposal also defines the terms “incapacitated adult” and “responsible person”; these definitions closely resemble those set forth in § 18.2-369 regarding the abuse and neglect of incapacitated adults.

Although the proposal creates a new statute, the General Assembly has addressed crimes against incapacitated adults twice in recent history by amending § 18.2-369. In 2004, the General Assembly increased the penalty for abuse and neglect of an incapacitated adult resulting in serious bodily injury or disease from a Class 6 felony to a Class 4 felony and, in 2007, it amended the section to make abuse and neglect resulting in the death of an incapacitated adult a Class 3 felony.

#### Analysis:

According to FY2009 and FY2010 Circuit Court Automated Information System (CAIS) data, a total of 23,781 offenders were convicted of felony person, property, or fraud offenses. Most of these convictions (58%) involved crimes against property (Chapter 5 of Title 18.2), while 19% were crimes involving fraud (Chapter 6); the remaining 23% involved crimes against the person (Chapter 4). Data are not sufficiently detailed to determine how many of these offenses were committed against incapacitated adults or how many were committed by persons responsible for the care, custody, or control of the victim.

---

**Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposed legislation is unlikely to increase the future state-responsible (prison) bed space needs of the Commonwealth. The proposal defines a separate and distinct Class 1 misdemeanor, and includes mandatory jail terms in certain circumstances, for crimes committed against incapacitated adults (a term which is narrowly defined in the proposed language). When the proposed crime is an additional offense to an underlying misdemeanor, the offender will serve his sentence in jail as a local-responsible offender and it will have no impact on the state-responsible population. The proposed misdemeanor crime could also be an additional offense to an underlying felony; however, the addition of a misdemeanor conviction will not change the sentencing guidelines recommendation in the vast majority of cases (in the small proportion of cases in which it would increase the recommendation, it does so by only one month). For these reasons, an impact on the state-responsible population is unlikely.

**Local adult correctional facilities.** Because it defines a new misdemeanor and creates mandatory jail terms in certain cases, the proposal is expected to increase the local-responsible (jail) bed space needs of the Commonwealth. However, the databases available to the Commission do not contain sufficient detail to estimate the number of cases that may be affected by the proposal. Therefore, the magnitude of the impact on jails cannot be quantified.

**Adult community corrections programs.** Because the proposed crime would be an additional offense to an underlying felony or misdemeanor, the proposal is not expected to increase the number of offenders on community supervision or participating in community corrections programs. For local community corrections programs, the proposal may delay the need for services for some offenders, as they will be serving mandatory jail terms prior to being released to the community.

**Virginia's sentencing guidelines.** No adjustment to the guidelines would be necessary under the proposal.

**Juvenile correctional centers.** According to the Department of Juvenile Justice (DJJ), a person under the age of 18 can be adjudicated for an offense defined in Chapter 4 (§ 18.2-30 et seq.), Chapter 5 (§ 18.2-77 et seq.), or Chapter 6 (§ 18.2-168 et seq.) of Title 18.2. However, it is not known how many cases involve an incapacitated adult. While the impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined, it is expected to be minimal.

**Juvenile detention facilities.** Similarly, the DJJ reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined; however, the impact is expected to be minimal.

---

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