



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 285 (Patron – Herring)

LD#: 12100461

Date: 12/09/2011

Topic: Crimes against incapacitated or elder adults

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 890 of the 2011 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposed legislation adds § 18.2-504.2 regarding crimes against incapacitated or elder 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 or elder adult is guilty of a separate and distinct Class 1 misdemeanor if the underlying offense is a misdemeanor, and a separate and distinct Class 6 felony if the underlying offense is a felony. However, if the offender is responsible for the care, custody, or control of the victim, punishment for a conviction under this section 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 or elder 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 or elder 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 creates new felony and misdemeanor offenses associated with certain crimes when the victim is an incapacitated or elder adult. The proposal also provides for mandatory minimum penalties when the offender is a person responsible for the care, custody, or control of the victim. Because it defines a new felony offense, the proposed legislation may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, the databases available to the Commission do not contain sufficient detail to estimate the number of convictions that may be affected by the proposal. Therefore, the magnitude of the impact cannot be quantified.

Local adult correctional facilities. Because it defines new felony and misdemeanor offenses 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. Since the proposal could result in additional convictions or additional supervision requirements for certain offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections programs cannot be quantified.

Virginia's sentencing guidelines. The new felony and misdemeanor offenses created by the proposal would not be covered as the primary (most serious) offense in a sentencing event, but 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), it is possible that a person under the age of 18 could commit an offense set forth 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, whether the person committed the offense knowing or having reason to know that the victim of the offense was an incapacitated or elder adult is not known. Therefore, the Department of Juvenile Justice anticipates a minimal, if any, impact on the bed space needs of juvenile correctional centers. However, the actual impact on juvenile correctional center bed space needs cannot be determined.

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

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; therefore, Chapter 890 of the 2011 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.