



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1820
Enrolled
(Patron Prior to Enrollment – Ware, O.)

LD#: Enrolled

Date: 2/22/2013

Topic: Unstamped cigarettes

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
- **Juvenile Detention Facilities:**
Cannot be determined

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends § 58.1-1017, relating to the sale, purchase, etc., of unstamped cigarettes. Currently, § 58.1-1017 prohibits the sale, purchase, etc., of unstamped cigarettes for the purpose of evading the payment of taxes on such products. In general, this offense is a Class 2 misdemeanor. In 2004, however, the General Assembly increased the penalty for this offense to a Class 6 felony for violations involving 3,000 or more packages of cigarettes.

Under the proposal, the felony provision would be expanded to include offenses involving 500 or more packages of cigarettes. In addition, the penalty for a violation of § 58.1-1017 involving less than 500 packages of cigarettes would be increased from a Class 2 misdemeanor to a Class 1 misdemeanor for a first offense and to a Class 6 felony for a second or subsequent offense. While a first violation of § 58.1-1017 involving a large number of cigarettes would remain a Class 6 felony, the penalty would increase to a Class 5 felony if the offender is convicted of a second or subsequent violation involving 500 or more packages of cigarettes. For the enhanced felony penalties to apply, the offender must be at liberty between the first and second conviction.

Analysis:

According to the most recent data from the General District Court Automated Information System (CAIS) for fiscal year (FY) 2011 and FY2012, 29 offenders were convicted of a misdemeanor violation of § 58.1-1017 for the unlawful sale, etc., of less than 3,000 packs of unstamped cigarettes. The cigarette offense was the primary, or most serious, offense in 28 of the cases. While the majority (82.1%) of these offenders did not receive an active term of incarceration to serve after sentencing, five offenders (17.9%) were sentenced to a local-responsible (jail) term, with a median sentence length of two months.

According to FY2011 and FY2012 Circuit Court CAIS data, six offenders were convicted of a felony under § 58.1-1017 for the unlawful sale, etc., of 3,000 or more packs of unstamped cigarettes. The cigarette offense was the primary, or most serious, offense in five of the cases. None of these offenders received an active term of incarceration to serve after sentencing.

Existing databases do not provide sufficient detail to determine the number of violations of § 58.1-1017 that involve between 500 and 2,999 packages of unstamped cigarettes.

Impact of Proposed Legislation:

State adult correctional facilities. By increasing the penalties for second or subsequent violations of § 58.1-1017 and expanding the applicability of an existing felony offense, the proposal is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. However, since existing databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal, the magnitude of the impact on prison beds cannot be quantified.

Local adult correctional facilities. Similarly, the proposal may have an impact on local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be estimated, the potential impact on community corrections resources cannot be determined.

Virginia's sentencing guidelines. Convictions under § 58.1-1017 are not covered by the sentencing guidelines as the primary (most serious) offense in a case; however, a conviction under this provision can augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. The Department of Juvenile Justice (DJJ) reports that the proposal may have an impact on juvenile correctional center bed space needs. However, the actual impact cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that, while the proposal may have an impact on juvenile detention bed space needs, the actual impact cannot be determined.

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 3 of the Acts of Assembly of 2012, Special Session I, 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.