



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1822 (Patrons – Ware, O., Gilbert & Loupassi)

LD#: 13102135

Date: 12/21/2012

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 penalty for a violation of § 58.1-1017 involving less than 3,000 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 the penalty for a first violation of § 58.1-1017 involving 3,000 or more packages of cigarettes would remain the same, the penalty would increase to a Class 5 felony if the offender is convicted of a second or subsequent violation. 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.

Impact of Proposed Legislation:

State adult correctional facilities. By increasing the penalties for second or subsequent violations of § 58.1-1017, the proposal is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. However, since existing data are insufficient to identify cases that would meet the criteria contained in the proposal and no similar Class 5 felony offenses exist, the impact on sentencing for these offenses cannot be estimated. As a result, the magnitude of the impact of the proposal on prison bed space needs cannot be determined.

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.

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