



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1955

Amendment in the Nature of a Substitute (Patron Prior to Substitute – Landes)

LD#: 13104541

Date: 1/24/2013

Topic: Impersonating law enforcement officers or public safety personnel

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$4,048 (less than 1 bed)
- **Local Adult Correctional Facilities:**
\$5,689 (less than 1 bed)
- **Adult Community Corrections Programs:**
Cannot be determined

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

Summary of Proposed Legislation:

The proposal amends several sections of the *Code* relating to impersonating a law enforcement officer or other public safety personnel. Under the proposed modifications to § 15.2-1612, the penalty for wearing a uniform that is substantially similar to a sheriff's uniform with the intent to deceive another is increased from a Class 3 misdemeanor to a Class 1 misdemeanor. The proposal also increases the penalty for second or subsequent violations related to impersonating an officer or public safety personnel, or wearing a similar-looking uniform, under §§ 15.2-1612, 18.2-174, and 18.2-174.1 from a Class 1 misdemeanor to a Class 6 felony. The proposal does not modify § 18.2-175, relating to the unlawful wearing of an officer's uniform or use of vehicles with the word "police." Second or subsequent violations of § 18.2-175 would remain Class 1 misdemeanors.

Analysis:

According to fiscal year (FY) 2010 and FY2011 data from the Circuit Court Case Management System¹, the General District Court Case Management System¹, the Juvenile and Domestic Relations Court Case Management System¹, and the Local Inmate Data System, a second or subsequent violation of §§ 18.2-174 or 18.2-174.1 was the primary, or most serious, offense in three cases. While two offenders did not receive an active term of incarceration, one offender was sentenced to two months in jail. Under the proposal, these offenders could be prosecuted for a Class 6 felony. There were no convictions under § 15.2-1612 between FY2010 and FY2011.

The Department of Juvenile Justice (DJJ) Court Service Units serve as the point of entry into the juvenile justice system. An "intake" occurs when a juvenile is brought before a court service unit officer for one or more alleged law violations. The Department of Juvenile Justice reports averaging

¹ Formerly referred to as the Court Automated Information System (CAIS).

between 2 and 3 intake complaints per year for the three most recent fiscal years (FY2010 to FY2012) for a violation § 18.2-174 by a person under the age of 18. DJJ reports no intake complaints between FY2010 and FY2012 for a violation § 18.2-174.1 by a person under the age of 18. There were no commitments to the Department for any of the offenses. The Department has no data indicating the potential impact of raising the penalty for a violation of § 15.2-1612 of the *Code of Virginia* from a Class 3 misdemeanor to a Class 1 misdemeanor.

Impact of Proposed Legislation:

State adult correctional facilities. Between FY2006 and FY2011, no offenders were convicted of a second or subsequent offense under § 15.2-1612. As a result, increasing the penalty for a second or subsequent convictions under § 15.2-1612 from a Class 3 misdemeanor to a Class 6 felony is not expected to increase the state-responsible (prison) bed space needs of the Commonwealth.

However, raising the penalty for a second or subsequent conviction under §§ 18.2-174 and 18.2-174.1 from a Class 1 misdemeanor to a Class 6 felony is expected to increase the need for state-responsible (prison) beds. The impact is estimated to be less than one bed by FY2019. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$4,048.

Local adult correctional facilities. Since only one offender was convicted under § 15.2-1612 between FY2006 and FY2011, increasing the penalty for a first offense from a Class 3 misdemeanor to a Class 1 misdemeanor is expected to have a minimal impact on local-responsible (jail) bed space needs. Because some offenders will likely serve longer jail terms if they are convicted of a Class 6 felony under §§ 18.2-174 or 18.2-174.1, the proposal is expected to result in a net increase local-responsible (jail) bed space needs. The impact is estimated to be an increase of less than one bed statewide, for a cost to the state of \$5,689 and \$6,089 to the localities.

Adult community corrections resources. Raising a crime from a Class 1 misdemeanor to a Class 6 felony may decrease the demand for local community-based probation services and increase the need for state community corrections resources. The *Code of Virginia*, however, allows judges to utilize local community-based probation programs for Class 5 and Class 6 felons as well as misdemeanants. The net impact of the proposal on local versus state community corrections resources cannot be estimated.

Virginia's sentencing guidelines. Because the proposal defines new felony offenses, convictions under the proposed modifications to the *Code* would not be covered by the sentencing guidelines as the primary, or most serious, offense. Such a conviction, however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines is necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice, it is possible that a person under the age of 18 could be adjudicated delinquent of a Class 6 felony for a second or subsequent offense under the statutes pertaining to the impersonation of a law enforcement officer or other public safety personnel. In such an event, an adjudication for a Class 6 felony in juvenile and domestic relations district court would make that person eligible for commitment to a juvenile correctional center pursuant to subsection (A)(14) of § 16.1-278.8 of the *Code of Virginia*. Therefore, the legislative proposal may have an impact on juvenile correctional center bed space needs. However, the actual impact on juvenile correctional center bed space needs is remote at best.

Juvenile detention facilities. It is possible that a person under the age of 18 could violate § 15.2-1612 of the *Code of Virginia* and be subject to the new Class 1 misdemeanor penalty. In such an event, the person could be subject to pre-trial detention in a juvenile detention facility pursuant to § 16.1-248.1 of the *Code of Virginia*. In addition, the new Class 6 felony penalties for each subsequent offense would

qualify for post-dispositional detention under § 16.1-284.1. Therefore, the legislative proposal may have an impact on juvenile on pre- and post-dispositional detention bed space needs. However, the actual impact on juvenile detention bed space needs is remote at best.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$4,048 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.

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety's Committee on Inmate Forecasting in 2011.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety's Committee on Inmate Forecasting and approved in 2011.
3. Cost per prison bed was assumed to be \$29,081 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.***
4. Cost per jail bed was based on The Compensation Board's FY2010 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.19 per day or \$10,296 per year. The local cost was calculated by using the daily expenditure cost of \$70.01 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$30.17 per day or \$11,020 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.***

Assumptions relating to offenders

1. It was assumed that prosecutors would charge all eligible offenders with the proposed Class 6 felony.
2. The impact of the proposed legislation, which would be effective on July 1, 2013, is phased in to account for case processing time.

Assumptions relating to sentence lengths

1. Offenders affected by the proposal were assumed to receive sentences similar to offenders currently convicted for a Class 6 felony for a second or subsequent violation of § 18.2-186.3.
2. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2011. For larceny/fraud crimes, this rate was 10.3%.

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