



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1017 (Patrons – Howell and Norment)

LD#: 13102140

Date: 12/28/2012

Topic: Tax-paid contraband 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 § 58.1-1017.1 to increase the penalties for possession with intent to distribute tax-paid contraband cigarettes. Currently, any person who possesses, with the intent to distribute, more than 25 cartons of tax-paid cigarettes is guilty of a Class 2 misdemeanor for a first offense and a Class 1 misdemeanor for a second or subsequent offense. Under the proposal, the penalty for a first offense would increase to a Class 1 misdemeanor for violations involving less than 500 cartons and to a Class 6 felony if the offense involved 500 or more cartons. In addition, the penalty for a second or subsequent offense would be elevated to a Class 6 felony for violations involving less than 500 cartons and to a Class 5 felony for a second or subsequent offense involving 500 or more cartons of cigarettes.

Section 58.1-1017.1 was passed by the 2012 General Assembly and became effective on July 1, 2012.

Analysis:

Since § 58.1-1017.1 just came into effect on July 1, 2012, only preliminary General District Court Automated Information System (CAIS) data for fiscal year 2013 can be used. As of October 26, 2012, 14 offenders had been convicted of a Class 2 misdemeanor for a first violation of § 58.1-1017.1. The cigarette offense was the primary, or most serious, offense in all of the cases. While 12 of these offenders did not receive an active term of incarceration to serve after sentencing, the remaining two offenders were sentenced to three and four months in jail. One additional offender was convicted of a Class 1 misdemeanor for a second or subsequent violation of § 58.1-1017.1. This offender did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. By raising the penalty structure from a Class 1 misdemeanor to a Class 6 felony for a second or subsequent conviction under § 58.1-1017.1, and further increasing the penalty based on the amount of cigarettes involved, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, sufficient time has not elapsed since the creation of § 58.1-1017.1 to estimate the number of offenders who would be subject to the proposed felony enhancements. As a result, the impact of the proposal cannot be quantified.

Local adult correctional facilities. The proposal may also increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be determined.

Adult community corrections programs. 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 on community corrections programs cannot be estimated.

Virginia's sentencing guidelines. Convictions under § 58.1-1017.1 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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