



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1020

Enrolled

(Patrons Prior to Enrollment – Howell and Norment)

LD#: Enrolled

Date: 2/23/2013

Topic: Cigarette violations added to the Racketeer Influenced and Corrupt Organization Act

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 § 18.2-513 relating to the Virginia Racketeer Influenced and Corrupt Organization (RICO) Act. Under the proposal, “racketeering activity” would be expanded to include violations of § 58.1-1017.1, regarding the unauthorized possession with intent to distribute large quantities of tax-paid contraband cigarettes. Under § 58.1-1017.1, 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. Section 58.1-1017.1 was passed by the 2012 General Assembly and became effective on July 1, 2012.

Currently, racketeering activity means to commit, attempt or conspire to commit, or to solicit, coerce or intimidate another to commit two or more of the following offenses: murder, voluntary manslaughter, selected assaults, kidnapping, crimes by gangs, shooting offenses, terrorism, obstruction of justice, violations of the Waste Management Act, injuries caused by prisoners, robbery, certain arsons, burglary, grand larceny, embezzlement, several fraud offenses, money laundering, specific drug offenses, paramilitary activity, perjury, bribery, transmitting illegal money, medical assistance fraud, dog fighting, and certain cigarette tax violations.

Under the proposal, penalties for a RICO violation remain the same. Any person or enterprise convicted of racketeering is guilty of a felony that is punishable by imprisonment for not less than 5 years nor more than 40 years and a fine of not more than \$1 million. A second or subsequent offense is punishable as a Class 2 felony (20 years to life in prison) and a fine of not more than \$2 million. The transmission of money derived from, or traceable to, racketeering activity is punishable as a Class 6 felony (1-5 years). The General Assembly passed the RICO Act in 2004; amendments to § 18.2-513 were made most

recently in 2008 (adding dogfighting) and 2009 (adding cigarette tax violations and prostitution-related offenses).

Analysis:

According to fiscal year (FY) 2011 and FY2012 Circuit Court Automated Information System (CAIS) data, three offenders were convicted of racketeering under the Virginia RICO Act as their primary (most serious) offense at sentencing. One offender, whose only additional conviction was for cigarette tax evasion under § 58.1-1017, received no active term of incarceration. The two remaining offenders were sentenced to state-responsible (prison) terms. One offender, with additional convictions for forgery and other non-violent property offenses, was sentenced to three years imprisonment; the other, with additional convictions for attempted robbery and other violent offenses, received ten years imprisonment.

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 to describe sentencing patterns for violations of § 58.1-1017.1. 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 expanding existing felony offenses, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, the number of additional felony convictions that may result from the proposal cannot be estimated; therefore, the impact of the proposal on prison bed space cannot be determined.

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. 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 § 18.2-513, et seq., are not covered by the sentencing guidelines. A conviction under one of these provisions, however, could augment the guidelines recommendation if the most serious offense at sentencing is a covered offense. No adjustment to the sentencing 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 (DJJ) 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.

RICO03_enrolled