



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 108

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

LD#: 12104587

Date: 1/23/2012

Topic: Embezzlement

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:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 890 of the 2011 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal expands the definition of embezzlement under § 18.2-111 of the *Code of Virginia* by creating a specific embezzlement offense for violating the Uniform Power of Attorney Act to fraudulently convert funds or property from the principle. Under § 18.2-111, embezzling less than \$200 is punishable as a Class 1 misdemeanor. If an individual embezzles property valued at \$200 or more, he is subject to a term of imprisonment from one to twenty years.

The proposal further clarifies, in § 26-94, that penalties and criminal prosecution, available under other applicable sections of the *Code of Virginia*, apply to violations of the Uniform Power of Attorney Act.

Analysis:

According to Sentencing Guidelines data for fiscal year (FY) 2010 and FY2011, 1,218 cases included a conviction for embezzlement of \$200 or more under § 18.2-111. Embezzlement was the primary (or most serious) offense in 1,189 cases. Of these:

- 686 (57.7%) were not sentenced to an active period of incarceration;
- 381 (32%) received a local-responsible (jail) term, with a median sentence of 3 months; and
- 122 (10.3%) received a state-responsible (prison) term, with a median sentence of 24 months.

Data are insufficiently detailed to determine if any of these cases involved the use of power of attorney to fraudulently convert funds or property.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal would create a specific embezzlement offense for using power of attorney to fraudulently convert funds or property, where one does not currently exist. Consequently, it could increase the need for state-responsible (prison) beds. The number of additional felony convictions that may result from the proposal cannot be estimated; therefore, the impact of the proposal cannot be determined.

Local adult correctional facilities. Because nearly one-third of the embezzlement convictions under § 18.2-111 resulted in local-responsible (jail) sentences, the proposal may increase local-responsible (jail) bed space needs. However, data are not available to estimate the magnitude of the impact.

Adult community corrections resources. Because the proposal may result in additional felony offenders on community supervision, the proposal may impact local and state community corrections resources. However, the full cost of the impact on adult community corrections cannot be estimated.

Virginia's sentencing guidelines. Felony convictions under § 18.2-111 are covered by the sentencing guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice, the proposal is not expected to increase juvenile correctional center bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

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 890 of the 2011 Acts of Assembly 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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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