



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 706

Amendment in the Nature of a Substitute (Patrons Prior to Substitute – Stuart and Herring)

LD #: 13104029

Date: 1/21/2013

Topic: Financial exploitation of mentally incapacitated individuals

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 proposed legislation adds § 18.2-178.1 to create offenses relating to the financial exploitation of mentally incapacitated individuals. Under the proposal, any person who knows or should know that another person suffers from mental incapacity and who, through the use of that person's mental incapacity, obtains, converts, or takes control of money or property belonging to the victim would be guilty of larceny.

Currently, larceny of less than \$200, not from a person, is punishable as a Class 1 misdemeanor. If the value of the goods is \$200 or more or the property stolen is a firearm, the offender is guilty of grand larceny. Grand larceny also includes the larceny of property with a value of \$5 or more from the person of another. Grand larceny is punishable by up to 20 years imprisonment and a fine up to \$2,500. In addition, offenders with misdemeanor larceny convictions may be subject to penalties defined by § 18.2-104; for a second misdemeanor larceny conviction, the penalty is 30 days to 12 months and, for a third or subsequent misdemeanor larceny conviction, the penalty is one to five years.

The proposal overlaps with many existing felony property crimes, including obtaining money or property by false pretenses (§ 18.2-178), forging and uttering (§ 18.2-172), and identity theft (§ 18.2-186.3).

Analysis:

The number of offenses committed against mentally incapacitated individuals, as defined in the proposal, is not known. However, the Incident-Based Reporting (IBR) Repository System maintained by the Virginia State Police is designed to capture the age of victim for incidents that are reported to

police. According to 2010 and 2011 IBR data, there were 1,954 arrests for property/fraud crimes committed against victims who were 70 years of age or older (see table below). Approximately 62% of these arrests were associated with incidents involving monetary or property loss valued at \$200 or more, which could make the offender subject to felony prosecution. Data are not sufficiently detailed to determine how many of these victims would be considered mentally incapacitated under the proposal or how many incidents involve younger victims who would meet the criteria for being mentally incapacitated.

**Arrests Associated with Incidents Reported to Police
Involving Victims 70 Years of Age or Older**

	2010	2011
Arrests for Property/Fraud Crimes		
Monetary/property loss not specified	66	74
Monetary/property loss valued at \$200 or more	625	577
Monetary/property loss valued at less than \$200	321	291
Total	1,012	942

Property/fraud crimes include burglary, larceny, motor vehicle theft, stolen property, fraud, forgery, embezzlement, extortion/blackmail, arson, and vandalism.

Source: Electronic criminal incident reports submitted to the Incident-Based Reporting (IBR) Repository System administered by the Virginia State Police as analyzed by the Department of Criminal Justice Services Research Center

Impact of Proposed Legislation:

State adult correctional facilities. The proposed legislation creates a new felony offense associated with certain financial or property crimes when the victim is mentally incapacitated. As a result, the proposed legislation may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, the databases available to the Commission do not contain sufficient detail to estimate the number of additional felony convictions that may result from the proposal or the impact on sentencing practices in cases involving mentally incapacitated individuals.

Local adult correctional facilities. The proposal could also affect the local-responsible (jail) bed space needs of the Commonwealth. However, the magnitude of the impact cannot be determined.

Adult community corrections programs. The net impact of the proposal on community corrections resources cannot be determined.

Virginia's sentencing guidelines. Because the proposal defines a new felony offense, convictions under the proposed § 18.2-178.1 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, the proposal may have an impact on juvenile correctional center bed space needs. However, the actual impact on juvenile correctional centers cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that, while the proposal may have an impact on juvenile detention center bed space needs, the actual impact on detention facilities 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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