



## Fiscal Impact Statement for Proposed Legislation

### *Virginia Criminal Sentencing Commission*

#### **House Bill No. 315** **(Patron – Kory)**

**LD #:** 14100359

**Date:** 10/18/2013

**Topic:** Financial exploitation of incapacitated persons

#### **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 806 of the 2013 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

#### **Summary of Proposed Legislation:**

The proposal modifies § 18.2-178.1, relating to the financial exploitation of incapacitated persons. Currently, any individual who knows or should know that another person is mentally incapacitated and who, through the use of the victim's mental incapacity, takes, obtains, or converts money or property belonging to that person would be guilty of a Class 1 misdemeanor if the value of the money or property is less than \$200 or, if the value of the money or property is \$200 or more, a felony punishable by 1 to 20 years in prison. Under the proposal, taking, etc., money or property belonging to an incapacitated person through the use of their incapacity would be punishable as a Class 3 felony, regardless of the value of the property.

The proposal also modifies the definition of incapacity, as used in § 18.2-178.1, to clarify that the condition that prevents the victim from understanding the nature or consequences of the transaction or disposition of money or property must result from mental illness, intellectual disability, physical illness or disability, advanced age, or any other cause. The proposed § 19.2-386.35 provides for the lawful seizure by a law-enforcement officer and forfeiture to the Commonwealth of property used in connection with the financial exploitation of incapacitated individuals.

Section 18.2-178.1 was passed by the 2013 General Assembly and became effective on July 1, 2013.

#### **Analysis:**

Since § 18.2-178.1 only came into effect on July 1, 2013, databases available to the Commission do not yet capture the number of offenders who have been charged or convicted of financial exploitation of an incapacitated person.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By raising the penalty for financial exploitation of an incapacitated person involving property valued at less than \$200 from a Class 1 misdemeanor to a Class 3 felony, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. In addition, increasing the statutory minimum penalty for offenders who could already be prosecuted for a felony under § 18.2-178.1 from one to five years may impact bed space needs through jury sentencing because juries, by law, must impose at least the statutory minimum sentence specified in the *Code* and are not permitted to reduce or suspend any portion of the sentence. A judge may suspend a portion of the jury-imposed sentence, but judges rarely do so. Although the proposal may increase prison bed space needs, sufficient time has not elapsed since the creation of § 18.2-178.1 to estimate the number of offenders who would be subject to the proposed felony enhancement. 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 resources.** Because the proposal could result in additional felony convictions and subsequent supervision requirements for additional offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be determined.

**Virginia's sentencing guidelines.** Convictions under § 18.2-178.1 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.** 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.

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**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 806 of the 2013 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

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