



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 542 (Patron – McQuinn)

LD#: 14101107

Date: 12/27/2013

Topic: Wearing masks during commission of a crime

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 would modify § 18.2-422 of the *Code of Virginia*, relating to the wearing of masks. Currently, under § 18.2-422, any person over the age of 16 who covers his face so as to conceal his identity in a public place (or a private location without written consent of the owner) is guilty of a Class 6 felony, punishable by up to 5 years imprisonment. Section 18.2-422 exempts certain behavior, such as wearing masks as party of a holiday costume, theatrical productions, and medical necessity.

The proposal would expand § 18.2-422 to apply to all persons, regardless of age, and any venue. However, the proposed modifications would narrow existing law by only prohibiting the wearing of masks with the intent to conceal the wearer's identity while committing or attempting to commit a felony or Class 1 misdemeanor. If the mask is worn during a Class 1 misdemeanor, the offender would be guilty of a Class 2 misdemeanor. If the mask is worn during the commission of a felony, the penalty is increased to a Class 6 felony.

Analysis:

Available data do not contain sufficient detail to determine the number of incidents that would be affected by the proposal. However, affected offenders may be sentenced similarly to those who are currently convicted under § 18.2-422.

According to Circuit Court Case Management System (CMS)¹ data for fiscal year (FY) 2012 and FY2013, 79 offenders were convicted of a felony under § 18.2-422 for wearing a mask. Nearly all (94%) of these offenders were sentenced for a more serious felony offense at the same time as the mask violation. In the five remaining cases, this offense was the primary, or most serious, offense. Of these offenders, two were sentenced to state-responsible (prison) terms, for which the median sentence was two years. Two offenders were given local-responsible (jail) terms, with a median sentence of five months. The remaining offender did not receive an active term of incarceration to serve after sentencing. Circuit Court CMS data indicate that, in three of the cases, the mask offense was only offense at sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal contains several aspects that may decrease the state-responsible (prison) bed space needs of the Commonwealth. For instance, by requiring that the mask be worn during the commission of a felony and that the individual intended to conceal their identity, the proposal appears to narrow the applicability of the felony provisions of § 18.2-422.

The proposal, however, also contains elements that may increase the need for state-responsible beds, such as removing the age limit and making juveniles under the age of 17 eligible for prosecution under § 18.2-422. By increasing the number of individuals who may be subject to the provisions of § 18.2-422, the proposed legislation may increase the number of offenders convicted of a felony under this statute. Pursuant to § 16.1-269.1, juveniles who are at least 14 years old at the time of the offense who are charged with a felony may (and, under certain circumstances, must) be transferred to circuit court. Circuit court judges can employ a number of sentencing options that are not available to juvenile court judges, including incarceration in adult prison and jail facilities. Moreover, mandatory minimum penalties apply to juveniles convicted in circuit court and, if a charge carries a mandatory minimum term, the circuit court judge must impose the mandatory time. Additionally, per § 16.1-271, juveniles who are convicted as adults in circuit court must be treated as adults for subsequent criminal acts.

Existing databases do not provide sufficient detail to estimate the net impact of the proposal on state-responsible (prison) bed space needs. As a result, the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the net impact of the proposal on local-responsible (jail) bed space needs cannot be determined.

Adult community corrections resources. The net impact on state community corrections resources and local community-based probation services cannot be estimated.

Virginia's sentencing guidelines. Convictions under § 18.2-422 are not covered by the sentencing guidelines as the primary (most serious) offense. Convictions for such an offense, however, could 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 (DJJ), the impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

¹ Formerly referred to as the Court Automated Information System (CAIS).

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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