



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2132

(Patron – Murphy)

LD #: 19104118

Date: 1/8/2019

Topic: Crimes against incapacitated or vulnerable adults

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Direct Care:**
Cannot be determined**
- **Juvenile Detention Facilities:**
Cannot be determined**

**Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2018, Special Session I, 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 and § 18.2-369, relating to crimes against incapacitated and vulnerable adults. Section 18.2-178.1 was passed by the 2013 General Assembly and became effective on July 1, 2013. Under the original language, any individual who knows or should know that another person suffers from a mental incapacity and who, through the use of the victim's mental incapacity, takes, obtains, or converts money or property belonging to that person is guilty of a Class 1 misdemeanor if the value of the money or property is less than \$200. If the value of the money or property is \$200 or more, the offense is a felony punishable by one to 20 years in prison. The 2018 General Assembly raised the felony threshold for this offense to \$500, effective July 1, 2018.

Under the proposal, the provisions of § 18.2-178.1 would be expanded to specifically include any person incapacitated as the result of mental illness, intellectual disability, physical illness, advanced age over the age of 60 years, or other cause that prevents him from understanding the nature or consequences of the transaction or disposition of money or other thing of value involved in such offense.

The proposal also amends § 18.2-369, relating to the abuse and neglect of incapacitated adults. Currently, this section covers only incapacitated adults, defined as persons 18 years of age or older who are impaired by reason of mental illness, intellectual disability, physical illness or disability, advanced age or other causes. The proposal expands the crime defined in this section to include abuse and neglect of vulnerable adults, defined as persons 60 years of age or older. Any responsible person who abuses or neglects a protected adult in violation of this section is guilty of a Class 1 misdemeanor if the abuse or neglect does not result in serious bodily injury or disease; any person who is convicted of a second or subsequent offense is guilty of a Class 6 felony. If a responsible person abuses or neglects an incapacitated adult and

such abuse or neglect results in serious bodily injury or disease, the offender is guilty of a Class 4 felony; if death occurs as the result of the abuse, the offender is guilty of a Class 3 felony.

Analysis:

According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2017 and FY2018, 10 offenders were convicted of a felony under § 18.2-178.1 for financial exploitation of a mentally incapacitated person involving \$200 or more. The financial exploitation conviction was the primary, or most serious, offense in eight of these cases; in at least three of these cases, the actual value of the crime exceeded the current \$500 felony threshold. Two offenders (25%) were given a state-responsible (prison) term with a median sentence of 5.2 years. Two of the eight offenders (25%) received a local-responsible (jail) term and each received a sentence of three months. The remaining four offenders (50%) did not receive an active term of incarceration to serve after sentencing. During the same two-year period, General District Court CMS data indicate that there were no misdemeanor convictions under § 18.2-178.1 for financial exploitation of mentally incapacitated persons involving less than \$200.

Furthermore, 11 offenders were convicted of a felony violation of § 18.2-369 for abuse or neglect of an incapacitated adult resulting in serious bodily injury or disease during this two-year period. This offense was the primary offense in nine cases. Of these, two offenders (22.2%) were sentenced to serve state-responsible (prison) terms of, respectively, one and two years. The remaining seven offenders (77.8%) did not receive an active term of incarceration to serve after sentencing. No offender received a local-responsible (jail) term. There were no felony convictions for a second or subsequent offense under this section, or for abuse or neglect resulting in death.

General District Court CMS data for FY2017 and FY2018 indicate that 17 offenders were convicted of misdemeanor abuse or neglect of an incapacitated adult under § 18.2-369. Of these, 10 offenders (58.8%) were sentenced to serve jail terms for which the median sentence was one month. The remaining seven offenders (41.2%) did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of existing felonies under § 18.2-178.1 and § 18.2-369, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing data sources do not contain sufficient detail to estimate the number of additional felony convictions that may result from enactment of the proposal. Therefore, the magnitude of the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, 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 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 and § 18.2-369 are not covered by the sentencing guidelines as the primary (most serious) offense in a case; however, convictions under these sections 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 direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) 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.

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 2 of the Acts of Assembly of 2018, 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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