



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2063

(Patron – Mullin)

LD#: 21102616

Date: 1/12/2021

Topic: Payment of overtime

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 (likely negligible)**
- **Juvenile Detention Facilities:**
Cannot be determined (likely negligible)**

**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 1289 of the Acts of Assembly of 2020 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

Summary of Proposed Legislation:

The proposal amends § 40.1-29 of the *Code of Virginia*, relating to the failure to pay wages and adds § 40.1-29.2 to define payment of wages for overtime work. Under the proposal, employers are to pay employees who are entitled to overtime compensation pursuant to the federal Fair Labor Standards Act at a rate not less than one and one-half times the employee's regular rate of pay for any hours worked in excess of 40 hours in any one workweek. The bill also includes provisions for calculating an employee's regular rate of pay.

Currently, under § 40.1-29, in addition to civil penalties, an employer who willfully and with intent to defraud fails or refuses to pay wages is guilty of a Class 1 misdemeanor if the value of the unpaid wages is less than \$10,000. If the combined value of the unpaid wages is \$10,000 or more, the penalty is increased to a Class 6 felony. A second or subsequent conviction, regardless of the value of the wages, is a Class 6 felony. For purposes of this section, the determination as to the value of the wages is made by combining all wages the employer failed or refused to pay which, under the proposal, would include the newly-defined § 40.1-29.2 related to overtime pay.

Analysis:

According to fiscal year (FY) 2015 through FY2020 General District Court and Circuit Court Case Management System (CMS) data, a misdemeanor conviction under § 40.1-29 for unlawfully withholding wages was the primary (or most serious offense) in seven sentencing events. Five offenders (71%) did not

receive an active term of incarceration to serve after sentencing. Two offenders (29%) received local-responsible (jail) terms of 12 and 24 months¹. Circuit Court CMS data indicate that there was one felony sentencing event under § 40.1-29 (withholding \$10,000 or more) during this six-year period; this offender did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities². By specifying the requirements for overtime pay, more employers may commit subsequent wage withholding offenses or reach the threshold for failing to pay wages valued at a total of \$10,000 or more. If an employer is inclined to defraud an employee of wages, the threshold of \$10,000 for a Class 6 felony conviction is easier to obtain because total wages due employees are likely to increase under the proposal. Likewise, the proposal expands the potential for employers to commit second or subsequent violations under § 40.1-29 and receive a felony conviction regardless of the value of wages withheld. In this way, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Data are not available to estimate the number of additional felony convictions that would result from enactment of the proposal. Therefore, the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal may increase local-responsible (jail) bed space needs. Because the number of new convictions that may result from enactment of the proposal cannot be determined, the magnitude of the impact on jail bed space needs cannot be estimated.

Adult community corrections programs. Because the proposal could result in more felony convictions and subsequent supervision requirements for additional offenders, the proposal may increase the need for adult community corrections resources. However, the potential impact on state and local community corrections programs cannot be determined.

Virginia's sentencing guidelines. Felony convictions under § 40.1-29 are not covered by the sentencing guidelines when the offense is the primary, or most serious, offense in a case. However, convictions under this statute 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 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, but is likely negligible.

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, but is likely negligible.

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 1289 of the Acts of Assembly of 2020 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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¹ The 24-month sentence involved two counts of the primary offense.

² Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only address the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with, or any revenue that may be generated by, the proposed legislation.