



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 687 Amendment in the Nature of a Substitute (Patrons Prior to Substitute – Mason and Obenshain[SB126])

LD #: 22107413

Date: 03/03/2022

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 552 of the 2021 Acts of Assembly, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends § 18.2-178.1 and § 18.2-369 to modify, and in some ways broaden, the definition of incapacitated adult for the purposes of defining the crimes of financial exploitation and abuse and neglect of such persons. Currently, “incapacitated adult” is defined as “an adult who is impaired by reason of mental illness, intellectual disability, physical illness or disability, advanced age or other causes to the extent he/she lacks sufficient understanding or capacity to make, communicate or carry out reasonable decisions concerning his/her well-being”. The proposal changes the term “incapacitated adult” to “vulnerable adult” and specifies that advanced age means 65 years of age or older. The proposal also adds to the definition of “vulnerable adult” any person who has one or limitations that substantially impair his/her ability to independently provide for daily needs or safeguard his/her person, property or legal interests.

Currently, under the § 18.2-178.1, financial exploitation of a person with a mental incapacity is punishable as larceny. Larceny is a Class 1 misdemeanor if the value of stolen money or property is less than \$1,000 or, if the value is \$1,000 or more, a felony punishable by imprisonment of 1 to 20 years. The proposal expands this provision to cover all those included in the new definition of “vulnerable adult.”

Under the current § 18.2-369, any responsible person who abuses or neglects an incapacitated adult is guilty of a Class 1 misdemeanor if the abuse or neglect does not result in serious bodily injury or disease; any person 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. The proposal replaces the term “incapacitated adult” in this section with “vulnerable adult.”

The proposal also provides exemptions from civil penalties for guardians or legal representatives of vulnerable adults who obtain or possess substances such as marijuana or cannabis oil for the medical benefit of the vulnerable adult.

Analysis:

According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2020 and FY2021, 14 offenders were convicted of a felony under § 18.2-178.1 for financial exploitation of a mentally incapacitated person. During FY2020, the felony threshold for larceny was \$500; for FY2021, the General Assembly increased the threshold to \$1,000. The financial exploitation conviction was the primary, or most serious, offense in 12 of these cases; in at least five cases, the actual value of the crime exceeded the current \$1,000 felony threshold. Two offenders (16.7%) were given state-responsible (prison) terms of, respectively, one and four years. One offender (8.3%) received a local-responsible (jail) sentence of 3.5 months. The remaining nine offenders (75.0%) 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 two misdemeanor convictions under § 18.2-178.1 for financial exploitation of mentally incapacitated persons. Neither of these two offenders received an active term of incarceration to serve after sentencing.

Furthermore, 20 offenders were convicted of a felony violation of § 18.2-369 for abuse or neglect of an incapacitated adult during this two-year period. This offense was the primary offense in 18 cases. Thirteen offenders were convicted of abuse or neglect of an incapacitated adult resulting in serious bodily injury or disease. Of these, eight offenders (61.5%) were sentenced to serve state-responsible (prison) terms with a median sentence of just over one year. Three offenders (23.1%) were given local-responsible (jail) terms with a median sentence of six months. The remaining two offenders (15.4%) did not receive an active term of incarceration to serve after sentencing. In addition, five offenders were convicted of abuse or neglect of an incapacitated adult resulting in death. Of these, three offenders (60%) were given prison terms with a median sentence of 1.5 years. The remaining two offenders (40%) did not receive an active term of incarceration to serve after sentencing. No offender received a local-responsible (jail) term for this offense. There were no felony convictions for a second or subsequent offense under this section.

General District Court CMS data for FY2020 and FY2021 indicate that seven offenders were convicted of misdemeanor abuse or neglect of an incapacitated adult under § 18.2-369. For the three offenders (42.9%) sentenced to serve jail terms, the median sentence was just under nine months.

Impact of Proposed Legislation:

State adult correctional facilities. By potentially 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 552 of the 2021 Acts of Assembly, 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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