



## Impact Analysis on Proposed Legislation

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### Virginia Criminal Sentencing Commission

### House Bill No. 2826 (Patron – Gilbert)

LD#: 07-4404306

Date: 1/3/2007

Topic: Virginia Security and Immigration Compliance Act

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
Cannot be determined
- **Local Adult Correctional Facilities:**  
Cannot be determined
- **Adult Community Corrections Programs:**  
Cannot be determined

- **Juvenile Correctional Centers:**  
None (\$0)
- **Juvenile Detention Facilities:**  
None (\$0)

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#### Summary of Proposed Legislation:

The proposal amends or adds several sections to the *Code of Virginia* relating to immigration to create the Virginia Security and Immigration Compliance Act.

The proposed § 18.2-59 would make it a Class 5 felony for any person to extort money or other benefit from another by confiscating, withholding, or threatening to withhold any actual or purported passport, immigration document, or other government identification document. Currently, under § 18.2-59, it is a Class 5 felony to 1) threaten injury to the character, person, or property of another person, 2) accuse him of any offense, or 3) threaten to report him as being illegally present in the United States in an attempt to extort money or other benefit from that person. This last element of § 18.2-59 was added by the 2006 General Assembly and became effective July 1, 2006.

The proposed § 9.1-150.5, regulates those who provide immigration assistance services and advertising placed by those service providers. Any person who violates any provisions of the section is guilty of a Class 2 misdemeanor for a first offense and a Class 1 misdemeanor for a second or subsequent offense committed within five years.

This proposal also:

- (1) Requires all public bodies and contractors who intend to contract with public bodies to register and participate in a federal work authorization program to verify information on all new employees;
- (2) Directs law-enforcement officers to report to the United States Immigration and Customs Enforcement Agency any person (i) arrested for a felony or for DUI and (ii) for whom there is probable cause to believe he is in the United States illegally; and
- (3) Requires taxpayers who take a deduction on their federal income tax returns for wages paid to employees who are aliens to add such wages back for purposes of calculating Virginia taxable income (for taxable years beginning January 1, 2008) if they fail to provide documents indicating that the employees are legally eligible for employment in the United States.

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**Analysis:**

According to the Local Inmate Data System (LIDS) for calendar years (CY) 2004 and CY2005, 10 offenders held pre- or post-trial in jail were convicted under § 18.2-59 for extortion. Six of the 10 offenders were given a state responsible (prison) term, for which the median sentence was 4 years.

The number of cases involving extortion of illegal immigrants is unknown. No data are available as yet for the element of § 18.2-59 relating to illegal immigrants added by the 2006 General Assembly.

As new crimes, there is also no data available on violations of the proposed § 9.1-150.5 dealing with the regulation of immigration service providers.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Because it expands a felony offense, the proposal may have an impact on the future state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal. The magnitude of the impact on prison beds cannot be quantified.

**Local adult correctional facilities.** Because a felony conviction can result in a sentence to be served in a local or regional jail and the proposal defines new Class 1 and 2 misdemeanors, the proposal may have an impact on future local-responsible (jail) bed space needs. However, the magnitude of the impact cannot be determined with existing data.

**Adult community corrections resources.** Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, it may increase the need for adult community corrections resources. The potential impact on community corrections programs cannot be quantified.

**Virginia's sentencing guidelines.** Convictions under §§ 9.1-150.5 and 18.2-59 are not covered by the sentencing guidelines as the primary (most serious) offense in a case; however, convictions for these crimes may augment the guidelines recommendation if a covered offense is the most serious at sentencing.

**Juvenile correctional centers.** According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase the need for juvenile correctional center beds.

**Juvenile detention facilities.** The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to increase the need for juvenile detention facilities.

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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 and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**