



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 918 (Patrons – Howell, et al.)

LD#: 07-3102744

Date: 1/3/2007

Topic: Revised Uniform Anatomical Gift Act

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined, likely to be negligible
- **Local Adult Correctional Facilities:**
Cannot be determined, likely to be negligible
- **Adult Community Corrections Programs:**
Cannot be determined, likely to be negligible

- **Juvenile Correctional Centers:**
None
- **Juvenile Detention Facilities:**
None

Summary of Proposed Legislation:

The proposal amends the *Code of Virginia* to replace current provisions with the Revised Uniform Anatomical Gift Act. This Act was adopted, in substantial part, by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in July of 2006.

Two sections of this proposal relate to criminal penalties. Under the proposed § 32.1-291.16, it will be a Class 4 felony to purchase or sell a body part for transplantation, research, therapy or education if removal is intended to occur after the individual's death. This section replaces § 32.1-289.1, which defines similar behavior as a Class 6 felony. Under proposed § 32.1-291.17, a person who intentionally falsifies, forges, conceals, defaces or obliterates a document relating to an anatomical gift in order to obtain financial gain is guilty of a Class 4 felony. Under current *Code*, forging a document for financial gain is a Class 4 felony under § 18.2-172, obtaining \$200 or more by false pretenses is also currently a Class 4 felony under § 18.2-172, and obtaining a signature by false pretenses is a felony punishable by up to 20 years.

This Act also:

- Ensures that the wishes of an individual to make (or not make) an anatomical gift will be respected without exception;
- Preserves the right of other persons to make an anatomical gift if the decedent did not make a gift during life, and clarifies how, to whom, and for what purpose, the gift may be made;
- Facilitates donation by expanding the list of persons who can make an anatomical gift and by establishing the priority and circumstances under which such persons may make a gift;
- Affirms that procurement organizations will have access to documents of gift in donor registries, medical records, and DMV records;
- Provides that taking measures to preserve the viability of organs, tissues and eyes for the purpose of donation is not inconsistent with a health-care directive requesting the withholding or withdrawal of life support systems;

- Clarifies the relationship between the medical examiner and procurement organizations to ensure that anatomical gifts can be made from decedents under the jurisdiction of the medical examiner.

Analysis:

No convictions under the existing § 32.1-289.1 can be identified in Pre/Post-Sentence Investigation (PSI) data for CY2004-CY2005.

According to fiscal year (FY) 2005 and FY2006 Sentencing Guidelines data, 2,257 offenders were convicted of a felony for forgery or obtaining money by false pretenses. The number of cases, if any, associated with anatomical gifts cannot be identified. None of these offenders were sentenced to the statutory maximum penalty allowed by current law.

FY2005 and FY2006 Felony Sentencing Information

Felony Offense	Total Cases	Disposition				
		No Active Incarceration	Local-Responsible (Jail)		State-Responsible (Prison)	
		% of Cases	% of Cases	Median Sentence	% of Cases	Median Sentence
§ 18.2-172 – Forgery	1,430	36.7%	32.4%	6 mos.	30.9%	1.7 yrs.
§ 18.2-178 – Obtaining money by false pretense >=\$200	810	35.9%	30.5%	7 mos.	33.6%	1.8 yrs.
§ 18.2-178 – Obtaining signature to writing by false pretense	17	47.1%	35.3%	8 mos.	17.6%	2.3 yrs.

Note: Sentence data reflects the total effective sentence (imposed less suspended time) given for all offenses in the same sentencing hearing. The median sentence is the middle value, above and below which lie an equal number of cases.

Data Source(s): Sentencing Guidelines (SG) database.

Impact of Proposed Legislation:

State adult correctional facilities. Because it redefines crimes related to anatomical gifts and raises the felony penalty for certain behavior prohibited by current *Code*, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Other aspects of the proposal related to forgery may already be covered by existing sections of the *Code*. Although the magnitude of the impact cannot be quantified with existing data, it is likely to be negligible.

Local adult correctional facilities. The proposal also may increase local-responsible (jail) bed space needs. While the magnitude of the impact cannot be quantified with existing data, it is likely to be negligible.

Adult community corrections resources. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Although the number of offenders who may be affected by the proposal cannot be determined, the impact on community corrections programs is likely to be negligible.

Virginia's sentencing guidelines. As new crimes, convictions under §§ 32.1-291.16 and 32.1-291.17 would not be covered by the sentencing guidelines as the primary (most serious) offense in a case. If enacted, however, convictions under this statute may augment the guidelines recommendation if a covered offense is the most serious at sentencing. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

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.

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