



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1422

(Patron – Stolle)

ID#: 09-0722838

Date: 1/22/2009

Topic: Aggravated Class 1 misdemeanor

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$0, No increase in state-responsible beds
- **Local Adult Correctional Facilities:**
At least \$954,372 (91 beds)
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
Cannot be determined
- **Juvenile Detention Facilities:**
Cannot be determined

Summary of Proposed Legislation:

The proposal amends numerous sections of the *Code* to create a new class of misdemeanor called an Aggravated Class 1 misdemeanor, which would be punishable by confinement in jail for not more than 24 months and/or a fine of not more than \$2,500.

The proposal increases eight crimes from Class 1 misdemeanors, with a statutory maximum of 12 months, to the new Aggravated Class 1 misdemeanor: assault and battery as a hate crime, assault and battery of school personnel, domestic assault (2nd conviction with 5 years), stalking (2nd conviction within 5 years), violation of a protective order (2nd conviction within 5 years if a current or previous offense involved a threat or act of violence), recruiting another to participate in a gang, driving on a suspended license (3rd conviction within 10 years), and driving after being declared a habitual traffic offender (1st conviction with no endangerment). The proposal also increases the maximum penalty for a second conviction for driving while intoxicated (§§ 18.2-270 and 46.2-341.28) from one year to two years.

The proposal modifies 18 statutes defining property crimes to increase the minimum dollar value for a felony violation from \$200 to \$500. Crimes involving \$200 or more but less than \$500 would be reduced from felonies to Aggravated Class 1 misdemeanors. In addition, the proposal creates the crime of Aggravated Petit Larceny, defined as larceny of property valued at \$200 or more but less than \$500. In addition to redefining larceny per se, this change will indirectly impact at least 22 other statutes, most of which define crimes that are then deemed larceny, such as receiving stolen goods (§ 18.2-108) and obtaining money by false pretenses (§ 18.2-178). Aggravated Petit Larceny would be punishable as an Aggravated Class 1 misdemeanor; however, the court must impose a term of confinement for Aggravated Petit Larceny which cannot be entirely suspended.

Finally, the proposal expands the predicate acts used to define criminal street gangs and gang activity (§ 18.2-46.1) to add grand larceny, aggravated petit larceny, petit larceny, shoplifting, concealing merchandise, possessing or receiving stolen property, larceny of a firearm, and receiving a stolen firearm. The proposed expansion affects a number of gang-related offenses. Under § 18.2-46.2, a criminal street gang member who knowingly participates in any predicate criminal act for the benefit of,

or at the direction of, the gang is guilty of a Class 5 felony. If the offender is 18 years of age or older and knows that the gang includes a juvenile member, he is guilty of a Class 4 felony. Section 18.2-46.3:3 provides enhanced penalties for gang-related offenses occurring on or within 1,000 feet of school property or on a school bus. Under § 18.2-46.3:1, a third or subsequent conviction for a gang offense is elevated to a Class 3 felony. The expansion of gang-related offenses may indirectly impact other crimes defined in the *Code*, such as narcotics offenses involving a continuing criminal enterprise (§ 18.2-248), racketeering (§§ 18.2-512 through 18.2-517), and hazing (§ 18.2-55.1).

Analysis:

Automated databases do not contain information on the value of money or property involved in fraud and larceny cases. However, in 2000, the Sentencing Commission collected supplemental information from case documents and conducted a special study of certain felony larceny and fraud offenses. This study, published in the Sentencing Commission's *2000 Annual Report*, indicated that roughly 30% of felony fraud cases and 44% of felony larceny cases involved money or property valued between \$200 and \$500. A similar study conducted by the Sentencing Commission in 1998 revealed that roughly 8% of embezzlement cases examined involved amounts between \$200 and \$500. Under the proposal, crimes involving \$200 or more but less than \$500 would be reduced from felonies to Aggravated Class 1 misdemeanors.

According to fiscal year (FY) 2006 and FY2007 Pre/Post-Sentence Investigation (PSI) data, nearly 13% of felons had a prior felony larceny or fraud conviction in their criminal record. Under the proposal, cases involving more than \$200 but less than \$500 would be prosecuted in the future as Aggravated Class 1 misdemeanors, not felonies. Prior convictions involving this dollar amount will be scored on the sentencing guidelines as misdemeanors instead of felonies, which could lower the sentencing recommendation for some offenders.

The proposal also increases several Class 1 misdemeanors to Aggravated Class 1 misdemeanors or, in the case of DWI (2nd conviction), raises the statutory maximum from 1 year to 2 years. According to the Local Inmate Data System (LIDS) database for calendar year (CY) 2005 and CY2006, approximately 17,289 offenders¹ held pre- or post-trial in jail were convicted of one of these offenses as the most serious offense. In addition, according to FY2007 and FY2008 Sentencing Guidelines data, at least 488 offenders convicted of a felony had one of the affected misdemeanor/DWI offenses as an additional offense in the case.

According to FY2006 and FY2007 PSI data, seven offenders were convicted of a felony gang offense under §§ 18.2-46.2, 18.2-46.3:1, or 18.2-46.3:3 during this time period. Six offenders were convicted of participation in a criminal act to benefit a gang that includes a juvenile. One offender was convicted for participation in a criminal act to benefit a gang in a school zone, a crime which carries a two-year mandatory minimum penalty.

Impact of Proposed Legislation:

State adult correctional facilities. Increasing the minimum dollar value for felony larceny and fraud crimes is expected to decrease the demand for state-responsible (prison) beds. The bed space savings associated with that aspect of the proposal will be partially offset by the proposed expansion of crimes used to define gangs and gang activity. The estimated net effect of the proposal is a reduction of 192

¹ This number includes an estimate for certain second misdemeanor convictions based on prior Commission research. For misdemeanor domestic assault, the Commission found that 8.5% of the offenders had a prior domestic assault conviction. For misdemeanor protective order violation convictions, 20.2% of the offenders had previously been convicted of a similar violation. For misdemeanor stalking convictions, 7.1% had previously been convicted of stalking.

prison beds by FY2015. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0.

Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY10	FY11	FY12	FY13	FY14	FY15
-39	-124	-171	-186	-192	-192

Local adult correctional facilities. All elements of the proposal will contribute to the need for additional local-responsible (jail) beds. The impact is estimated to be a net increase statewide of at least 91 beds by FY2015 (state cost: \$954,372; local cost: \$985,613).

Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY10	FY11	FY12	FY13	FY14	FY15
58	83	86	88	91	91

Adult community corrections resources. Reducing some felony and larceny offenses to misdemeanors will decrease the demand for state community corrections services and increase the demand for services from local providers. This reduction in state services will be partially offset by the expansion of gang-related offenses and any additional felony convictions, with associated supervision requirements, that may result.

Virginia's sentencing guidelines. The sentencing guidelines cover many of the felony larceny and fraud offenses affected by the proposal when such an offense is the primary (or most serious) in the case. All of the offenses affected by the proposal can be scored on the guidelines if they are additional offenses or part of the offender's prior record. Currently, however, the guidelines are not set up to score Aggravated Class 1 misdemeanors, since this crime category does not presently exist in the *Code*. Moreover, the guidelines are based on historical patterns of sentencing and time served for crimes as they are currently defined; by reducing some felonies to misdemeanors, the guidelines will no longer accurately reflect historical patterns for the cases that remain felonies. For these reasons, the Sentencing Commission would need to conduct a special study to determine whether modification of the guidelines would be warranted following enactment of the proposal. The earliest that such modifications could be made available for use is July 1, 2010.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional center bed space needs cannot be determined. Existing *Code* specifies that a juvenile is eligible for commitment if he is adjudicated for a felony, has a prior felony adjudication, or has accumulated a total of four Class 1 misdemeanor adjudications. The DJJ notes that the Department's Length of Stay (LOS) Guidelines would need to be modified.

Juvenile detention facilities. According to the Department of Juvenile Justice, the impact on the bed space needs of juvenile detention facilities cannot be quantified.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety's Committee on Inmate Forecasting in 2008.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety's Committee on Inmate Forecasting and approved in July 2008.
3. Cost per prison bed was assumed to be \$27,294 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.***
4. Cost per jail bed was based on The Compensation Board's FY2007 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.77 per day or \$10,509 per year. The local cost was calculated by using the daily expenditure cost of \$62.56 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$29.71 per day or \$10,853 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.***
5. The impact of the proposed legislation, which would be effective on July 1, 2009, is phased in to account for case processing time.
6. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. For prison inmates, release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2007 (11.7% for property crimes; 10.6% for person crimes; 11.9% for drug crimes). Release dates for misdemeanants were estimated based on the average percent (39.7%) of time served by misdemeanor prisoners in local and regional jails.

Assumptions related to the increase in the minimum dollar value for a felony larceny or fraud offense and the creation of an Aggravated Class 1 misdemeanor to punish cases involving more than \$200 but less than \$500

1. The overall number of larceny and fraud offenders will not change as a result of the proposal, but the breakdown between felony and misdemeanor convictions will be affected.
2. The number of cases involving a larceny or fraud offense that would be reduced from a felony to an Aggravated Class 1 misdemeanor was estimated based on previous research by the Sentencing Commission. Based on a 1998 study, 7.8% of embezzlements were assumed to involve \$200 or more but less than \$500. Based on a 2000 study, 44.1% of larcenies and 29.8% of frauds were assumed to involve \$200 or more but less than \$500.
3. Sentencing patterns are expected to change under the proposal and these were estimated in the following ways:
 - a. For cases in which the larceny/fraud offense would be reduced to an Aggravated Class 1 misdemeanor and there were no other felony charges, sentences were based on the actual distribution of sentences for cases involving \$200 to \$500, as found in the Commission's 2000 study. Any offender who received a sentence greater than the 24 months permitted by the proposal was assumed to receive a sentence of exactly 24 months. These offenders could no longer be state-responsible (prison) inmates.
 - b. For cases in which the larceny/fraud offense would be reduced to an Aggravated Class 1 misdemeanor but the offender was convicted of additional felony crimes, actual sentences received by the offenders were reduced. For each offender, the sentence was reduced by the difference in the sentencing guidelines recommendation under current law and under the proposal. The sentencing guidelines are not set up not to score Aggravated Class 1 misdemeanors, since this offense class does not currently exist; however, a score was assigned by averaging the scores for a Class 1 misdemeanor and a felony with a three-year maximum penalty on each guidelines worksheet.
 - c. The Commission's analysis revealed that nearly 13% of felons had a prior felony larceny or fraud conviction in their criminal record. The proportion of cases in which the prior larceny/fraud conviction would be reduced to an Aggravated Class 1 misdemeanor was estimated based on the Commission's prior research (see above). Actual sentences received by the offenders were reduced. For each offender, the sentence was reduced by the difference in the sentencing guidelines recommendation under current law and under the proposal. The sentencing guidelines are not set up not to score Aggravated Class 1 misdemeanors, since this offense class does not currently exist; however, a score was assigned by averaging the scores for a Class 1 misdemeanor and a felony with a three-year maximum penalty on each guidelines worksheet.

Assumptions related to raising specified Class 1 misdemeanors to Aggravated Class 1 misdemeanors

1. The overall number of misdemeanor offenders convicted of the specified crimes will not change as a result of the proposal.
2. For offenders sentenced to less than 12 months in jail, the sentence was assumed to remain the same under the proposal. It was assumed that sentences would change only for offenders who historically have been given a sentence of 12 months in jail, the existing statutory maximum. The sentences for these offenders were increased. The new sentences for these offenders were assumed to follow a normal distribution with a mean of 18 months, a standard deviation of three months, a minimum of 12 months and a maximum of 24 months.

Assumptions related to the expansion of gang predicate crimes

1. The proposal will increase the number of offenders sentenced for a gang-related offense under Article 2.1 of Title 18.2. The increase in these cases was estimated using conviction data for the current and proposed predicate crimes. According to FY2006 and FY2007 Pre/Post-Sentencing Investigation (PSI) data and CY2005 and CY2006 LIDS data, 24,576 offenders were sentenced for a crime currently listed as a predicate gang crime. Data reveal that another 16,661 offenders were sentenced for one of the crimes that would be added as a predicate crime under the proposal. This would result in an increase of 67.8% in convictions for predicate crimes. Therefore, the number of gang-related convictions associated with the proposal was assumed to increase by 67.8%.
2. Additional offenders convicted of a gang-related offense were assumed to receive sentences similar to offenders currently convicted for gang offenses under Article 2.1 of Title 18.2.

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