



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 1010

(Patron – Athey)

LD#: 10102165

Date: 1/8/2010

Topic: Illegal gambling

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
None (\$0)
- **Local Adult Correctional Facilities:**  
None (\$0)
- **Adult Community Corrections Programs:**  
None (\$0)

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

#### Summary of Proposed Legislation:

The proposal amends § 18.2-325 of Title 18.2, Chapter 8, Article 1 of the *Code of Virginia* to expand the terms “illegal gambling” and “gambling device”. Currently, “illegal gambling” means the placing of any bet or wager to win a prize, dependent upon the result of a game or any other event the outcome of which is uncertain or a matter of chance. The proposal expands the current definition by stating that in addition, illegal gambling is also risking money or other property for gain, contingent in whole or in part upon lot, chance or the operation of a gambling device.

Furthermore, under the proposal “gambling device” would include 1) any mechanism by the operation of which a right to money or other property may be credited, in return for consideration, as the result of the operation of an element of chance, or 2) any mechanism that, when operated for consideration, does not return the same value or property for the same consideration upon each operation.

Currently, the operator of an illegal gambling operation is guilty of a Class 6 felony under § 18.2-328; however, the operator of any such enterprise which (i) has been in continuous operation for more than thirty days or (ii) has gross revenue of \$2,000 or more in any single day is subject to imprisonment of 1 to 10 years and a fine up to \$20,000. It is a Class 1 misdemeanor for any owner, tenant or other occupant of any place or conveyance to knowingly allow illegal gambling (§ 18.2-329), for any person or association to knowingly aid or assist in an illegal gambling operation (§ 18.2-330), or for any person to possess a gambling device used in unlawful gambling activity (§ 18.2-331). Any person who illegally gambles is guilty of a Class 3 misdemeanor, punishable by a fine only (§ 18.2-326); however, any person who wins by fraud or cheating while gambling may receive a fine of 5 to 10 times the value of his/her winnings (§ 18.2-327). Any person who fraudulently enters a participant (man, animal, fowl, or vehicle) in a contest of speed or skill is also guilty of a Class 3 misdemeanor (§ 18.2-333).

#### Analysis:

According to fiscal year (FY) 2007 and FY2008 Pre/Post-Sentence Investigation (PSI) data, eight offenders were convicted of a felony under § 18.2-328 for operating an illegal gambling operation;

seven were sentenced to probation and one was sentenced to a local-responsible (jail) term of six months.

According to fiscal year (FY) 2008 and FY2009 General District Court Automated Information System (CAIS) data, 12 offenders were convicted of Class 1 misdemeanors under §§ 18.2-329, 18.2-330, and 18.2-331 and all received no active incarceration. Additionally, 79 offenders were convicted of offenses punishable by a fine only under §§ 18.2-326, 18.2-327, and 18.2-333.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By expanding the definition of “illegal gambling” and “gambling device”, the proposal expands the nature of an existing felony defined in § 18.2-328. This could increase the future state-responsible (prison) bed space needs of the Commonwealth. According to available data, however, there have only been eight felony convictions during a recent two-year period under the existing provision and none of the offenders convicted of this crime received a prison sentence. Therefore, it is not expected to increase the future state-responsible (prison) bed space needs of the Commonwealth.

**Local adult correctional facilities.** Similarly, the proposal could increase the future local-responsible (jail) bed space needs of the Commonwealth. Available data reveal that only one offender convicted of a Class 1 misdemeanor gambling offense received an active term of incarceration to serve after sentencing. The proposal is not expected to increase the future local-responsible (jail) bed space needs of the Commonwealth.

**Adult community corrections resources.** By expanding an existing felony, the proposal may increase the need for state community corrections resources. Because of the small number of cases, no impact is expected on adult community corrections resources.

**Virginia’s sentencing guidelines.** None of the convictions affected by the proposal are covered by the sentencing guidelines as the primary (most serious) offense in a case; however, convictions for any of these crimes 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.

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

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