



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1154

(Patron – Tata)

LD #: 10102326

Date: 1/5/2010

Topic: Crimes against seniors

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$421,647 (15 beds)
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

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

Summary of Proposed Legislation:

The proposed legislation adds § 18.2-213.2 to the *Code of Virginia* to define new penalties for crimes committed against older persons.

The proposal specifies new, higher penalties (as shown below) for many larceny and fraud offenses when the crime is committed against a person who is 60 years of age or older and the offender knew or reasonably should have known the victim was at least 60 years of age. Furthermore, under the proposal, any person who commits a second or subsequent offense in violation of the new § 18.2-213.2 would be sentenced to a term of imprisonment of two years in addition to the punishment authorized for the underlying offense. The crimes affected by the proposal are listed below.

| Offense | Current Penalty | Proposed Penalty - Victim is at least 60 years of age |
|--|--|--|
| Grand larceny (§ 18.2-95) and other felonies punished as grand larceny | Unclassed felony (Imprisonment 1 to 20 years) | Unclassed felony (Imprisonment 2 to 20 years) |
| Obtaining less than \$200 by false pretenses (§ 18.2-178) | Class 1 misdemeanor (Incarceration up to 12 months) | Class 3 felony (Imprisonment 5 to 20 years) |
| Obtaining \$200 or more by false pretenses (§ 18.2-178) | Unclassed felony (Imprisonment 1 to 20 years) | Class 3 felony (Imprisonment 5 to 20 years) |
| Obtaining signature by false pretenses (§ 18.2-178) | Class 4 felony (Imprisonment 2 to 10 years) | Class 3 felony (Imprisonment 5 to 20 years) |
| Forging and uttering (§ 18.2-172) | Class 5 felony (Imprisonment 1 to 10 years) | Class 4 felony (Imprisonment 2 to 10 years) |
| Identity theft - financial loss more than \$200 (§ 18.2-186.3) | Class 6 felony (Imprisonment 1 to 5 years) | Class 5 felony (Imprisonment 1 to 10 years) |

Analysis:

According to CY2008 Incident-Based Reporting (IBR) crime data provided by the Virginia Department of State Police and compiled by the Department of Criminal Justice Services, there were 132,783 offenses reported to police involving larceny, motor vehicle theft, stolen property offenses, false pretenses, counterfeiting/forgery, and impersonation (identity theft). Of the total, 71,683 (54%) resulted in a loss of \$200 or more based on the value of the single costliest item that was lost in the incident. Of offenses resulting in a loss of \$200 or more, 11% involved victims aged 60 or older.

Felony conviction data for property crimes rarely contain information regarding the age of the victim. The table below contains sentencing information for the crimes affected by the proposal irrespective of victim age.

Historical Sentencing Information for Specified Crimes (All Cases/Victims)

| | Number of Cases | % No Incarceration | % Local Responsible | % State Responsible | Median State Responsible Sentence |
|--|-----------------|--------------------|---------------------|---------------------|-----------------------------------|
| Grand larceny (§ 18.2-95) and other felonies punished as grand larceny | 8,051 | 40% | 37% | 23% | 2.0 yrs. |
| False pretenses (§ 18.2-178) | 1,015 | 38% | 28% | 34% | 1.9 yrs. |
| Forging and uttering (§ 18.2-172) | 1,416 | 37% | 32% | 31% | 1.6 yrs. |
| Identity theft - financial loss more than \$200 (§ 18.2-186.3) | 107 | 50% | 30% | 20% | 1.5 yrs. |

Note: Analysis based on cases in which the crime was the primary (or most serious) offense at time of sentencing.

Data Source: FY2008 and FY2009 Sentencing Guidelines data

Impact of Proposed Legislation:

State adult correctional facilities. The proposed legislation increases penalties for numerous property crimes committed against persons aged 60 and older and creates a new crime for second or subsequent violations. Thus, the proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. The impact of the proposed higher penalties for the specified crimes can be estimated; however, data are insufficient to estimate the potential impact of the proposed crime for second or subsequent offenses. For the portion of the impact that can be quantified, the impact is estimated to be at least 15 beds by FY2016. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$421,647.

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

| FY11 | FY12 | FY13 | FY14 | FY15 | FY16 |
|------|------|------|------|------|------|
| 5 | 10 | 13 | 14 | 15 | 15 |

Local adult correctional facilities. The proposal may decrease future need for local-responsible (jail) beds, as some offenders currently given a jail term will receive a prison term under the proposal. However, any savings may be offset by an increase in beds associated with the new crime for second or subsequent violations of the proposed statute. The net impact of the proposal cannot be estimated.

Adult community corrections programs. Because the proposal could result in additional felony offenders placed on community supervision, it may have an impact on adult community corrections resources; however, the magnitude of the impact cannot be determined.

Virginia's sentencing guidelines. New convictions under § 18.2-213.2 would not be covered by the sentencing guidelines as the primary, or most serious, offense. Such a conviction, however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines is necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice, the impact of the proposal on juvenile correctional center bed space needs cannot be determined.

Juvenile detention facilities. According to the Department of Juvenile Justice, the impact of the proposal 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 is at least \$421,647 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 2009.
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 2009.
3. Cost per prison bed was assumed to be \$27,700 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 FY2008 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$29.93 per day or \$10,932 per year. The local cost was calculated by using the daily expenditure cost of \$67.99 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 \$33.06 per day or \$12,075 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

Assumptions relating to offenders

1. It was assumed that 11.1% of the fraud and larceny convictions would have a victim 60 years of age or older. This is the proportion of felony-level larceny and fraud offenses reported to police involving a victim aged 60 or older (discussed in greater detail in the Analysis section above).

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2010, is phased in to account for case processing time.
2. 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. 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, 2008. For larceny and fraud crimes, this rate was 11.7%.
3. It was assumed that prosecutors would charge all eligible offenders under the proposed higher felony penalties.
4. For three offenses, the proposal increases only the statutory minimum penalty, leaving the current statutory maximum the same. Increased statutory minimums may impact bed space needs through jury sentencing because juries, by law, must impose at least the statutory minimum sentence specified in the *Code* and are not permitted to reduce or suspend any portion of the sentence. A judge may suspend a portion of the jury-imposed sentence, but judges rarely do so.

The impact of increasing statutory minimums for these three crimes was limited to those cases adjudicated by juries. Sentences were adjusted to reflect the dynamics of jury sentencing using information from the Sentencing Guidelines (SG) database. Sentences currently falling below the proposed statutory minimum were increased to the proposed minimum for the proportion of cases that were sentenced by a jury. For the small proportion of cases where the judge then suspended some of the jury-imposed time, the sentence was reduced based on the proportion by which such sentences have been reduced by judges historically.

If the actual sentence in jury cases already exceeded the proposed statutory minimum penalty, the case was presumed to have no impact.

5. Offenders affected by the proposal due to an increased penalty classification (higher statutory minimum and maximum) were assumed to receive sentences similar to offenders currently convicted for fraud crimes that carry the same felony penalty as the one proposed. For example, for misdemeanor cases under § 18.2-178 (false pretenses) that would be elevated to a Class 6 felony, it was assumed that the affected offenders would receive sentences similar to offenders currently convicted of Class 6 felony frauds defined in existing *Code*. For the Class 6 felony identity fraud (§ 18.2-186.3) that would be elevated to a Class 5 felony, it was assumed that the affected offenders would receive sentences similar to offenders currently convicted of existing Class 5 felony frauds.

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