



## Impact Analysis on Proposed Legislation

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### *Virginia Criminal Sentencing Commission*

#### House Bill No. 244 (Patron – Janis)

**LD#:** 10103168

**Date:** 12/30/2009

**Topic:** Punishment for contraband and certain conduct in correctional facilities

#### **Fiscal Impact Summary:**

- **State Adult Correctional Facilities:**  
At least \$266,735 (10 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

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#### **Summary of Proposed Legislation:**

The proposal addresses contraband in correctional facilities by adding a new crime to § 18.2-474, and expanding and increasing the penalty for certain crimes by prisoners defined in § 53.1-203.

The proposal expands § 18.2-474 by creating a new Class 1 misdemeanor for a prisoner who willfully brings, or attempts to bring, any article of any nature whatsoever into a facility without first securing the permission of the appropriate person in charge. Currently, the prohibition applies only to a second party delivering or attempting to deliver anything to a prisoner without obtaining permission.

The proposal increases the penalty specified in § 53.1-203 for certain crimes committed by prisoners, raising those crimes from Class 6 felonies (1 to 5 years) to Class 3 felonies (5 to 20 years). The proposed change applies to:

- Making, procuring, secreting or possessing an unauthorized knife, tool, or other thing capable of causing death or bodily injury (§ 53.1-203(4));
- Possessing, or introducing into a correctional facility, firearms or ammunition for firearms (§ 53.1-203(7));
- Willfully tampering with, damaging, destroying, or disabling any fire protection or fire suppression equipment, or sprinklers within any correctional facility (§ 53.1-203(9));
- Burning or destroying by use of any explosive device or substance any personal property within a correctional facility (§ 53.1-203(8)). The proposal also expands this crime to include procuring, selling, secreting or possessing any explosive device or substance within a facility.

The proposal leaves the penalties associated with several other crimes defined by § 53.1-203 unchanged.

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#### **Analysis:**

According to the Local Inmate Data System (LIDS) for calendar years 2007 and 2008, 57 people were convicted of a misdemeanor under § 18.2-474 for delivering unauthorized items to prisoners. Nearly all

(98%) were sentenced to an active term of incarceration with a median sentence of 20 days. There is no information available on the number of prisoners bringing or attempting to bring unauthorized items into a correctional facility who would be subject to the proposed misdemeanor offense.

According to calendar year 2007 and 2008 Pre- and Post-Sentence Investigation (PSI) data, 15 offenders were convicted of crimes affected by the proposed changes to § 53.1-203. Most (60%) received a state-responsible (prison) term, for which the median sentence was one year. Eleven of the offenders were convicted of making or possessing a weapon capable of causing injury or death, while the remaining four offenders were convicted of tampering or damaging the fire protection or fire suppression system of the correctional facility. There were no cases found for the other two offenses in § 53.1-203 affected by the proposal.

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### Impact of Proposed Legislation:

**State adult correctional facilities.** The proposal increases certain crimes committed by prisoners from Class 6 to Class 3 felonies. Therefore, it is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. The impact is estimated to be 10 beds by FY2016. The impact, however, may be larger if additional prisoners are convicted of contraband violations under the proposed Class 1 misdemeanor offense and receive sentences to be served consecutively to their current terms. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$266,735.

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

FY11	FY12	FY13	FY14	FY15	FY16
1	3	6	8	9	10

**Local adult correctional facilities.** The proposal has offsetting elements with respect to the impact on the local-responsible (jail) bed space needs. The proposed change to § 53.1-203 is expected to decrease the need for local-responsible (jail) beds, as some offenders sentenced to jail under current law will be given a prison sentence under the proposal, based on the increased penalties for the crimes committed. However, the proposed change to § 18.2-474 creates a new misdemeanor, which is expected to increase the number of offenders serving a jail sentence. Data are insufficient to determine the net impact of the proposal on jail beds.

**Adult community corrections resources.** All crimes affected by the proposal pertain to prisoners. Because the proposal is not expected to result in additional felony convictions, it is unlikely to increase the need for state community-based corrections resources. By creating a new misdemeanor, the proposal may increase the need for local community-based probation services. Data are not available to estimate the impact on local community corrections resources that may result from the proposal.

**Virginia's sentencing guidelines.** The crimes affected by the proposal are not covered by the sentencing guidelines as the primary (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 would be necessary under the proposal.

**Juvenile correctional centers.** According to the Department of Juvenile Justice (DJJ), the proposal may increase juvenile correctional center (JCC) bed space needs but the magnitude of the impact cannot be determined.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal may increase the bed space needs of juvenile detention facilities but the magnitude of the impact cannot be determined.

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$266,735 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 sentencing**

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. To gauge the impact on sentencing, it was assumed that the distribution of sentences for the affected cases will be similar to the distribution of sentences under existing provisions for Class 3 felony burglary crimes.
3. 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 person crimes, this rate was 10.4%.

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