



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 556 (Patron – Herring)

LD #: 10101755

Date: 12/14/2009

Topic: Crimes against incapacitated or elder adults

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 781 of the 2009 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposed legislation adds § 18.2-504.2 regarding crimes against incapacitated or elder adults. Under to the proposal, any person who knowingly commits an offense set forth in Chapter 4 (Crimes Against the Person, § 18.2-30 et seq.), Chapter 5 (Crimes Against Property, § 18.2-77 et seq.), or Chapter 6 (Crimes Involving Fraud, § 18.2-168 et seq.) of Title 18.2 of the *Code of Virginia*, against an incapacitated or elder adult is guilty of a separate and distinct Class 1 misdemeanor if the underlying offense is a misdemeanor, and a separate and distinct Class 6 felony if the underlying offense is a felony. However, if the offender is responsible for the care, custody, or control of the victim, punishment for a misdemeanor under the proposed section shall include a mandatory minimum term of confinement of 30 days, and punishment for a felony under this section shall include a mandatory minimum term of confinement of six months.

The proposal also defines the terms “incapacitated or elder adult” and “responsible person”; these definitions closely resemble those set forth in § 18.2-369 regarding the abuse and neglect of incapacitated adults.

Although the proposal creates a new statute, the General Assembly has addressed crimes against incapacitated adults twice in recent history by amending § 18.2-369. In 2004, the General Assembly increased the penalty for abuse and neglect of an incapacitated adult resulting in serious bodily injury or disease from a Class 6 felony to a Class 4 felony and, in 2007, it amended the section to make abuse and neglect resulting in the death of an incapacitated adult a Class 3 felony.

Analysis:

According to fiscal year (FY) 2007 and FY2008 Pre/Post-Sentence Investigation (PSI) data, 14,331 offenders were convicted of felony person, property, or fraud offenses in which the victim may have been an incapacitated or elder adult. Most of these convictions (57%) involved crimes against property

(Chapter 5 of Title 18.2), while 20% were crimes involving fraud (Chapter 6). The remaining 23% involved crimes against the person (Chapter 4). Information regarding the victim's age and handicap status, however, was not available for the majority of the cases. The victim's handicap status was missing or unknown for 92% of the property crimes, 95% of fraud offenses, and 31% of person crimes. Similarly, the victim's age was missing or unknown for most cases. Victims were found to be over the age of 65 in only 123 cases, corresponding to 2.2% of the person crimes, 0.4% of the property crimes, and 0.6% of the fraud offenses. Also, there is no way to tell from these data which offenders could be defined as "responsible persons," which would trigger the proposed mandatory minimums.

According to the PSI data, three offenders were convicted under § 18.2-369 for abuse and neglect of an incapacitated adult resulting in serious bodily injury or disease. Of these, two received probation and the third was sentenced to five years imprisonment.

Impact of Proposed Legislation:

State adult correctional facilities. The proposed legislation creates new felony and misdemeanor offenses associated with certain crimes when the victim is an incapacitated or elder adult. The proposal also provides for mandatory minimum penalties when the offender is a person responsible for the care, custody, or control of the victim. The proposed legislation may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, the databases available to the Commission do not contain sufficient detail to estimate the number of convictions that may be affected by the proposal. Therefore, the magnitude of the impact cannot be quantified.

Local adult correctional facilities. The proposal could also affect the local-responsible (jail) bed space needs of the Commonwealth. However, the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in additional convictions and subsequent supervision requirements for certain offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. The new felony and misdemeanor offenses created by the proposal would not be covered as the primary (most serious) offense in a sentencing event, but may augment the guidelines recommendation if a covered offense is the most serious at conviction. 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 have an impact on juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to have an impact on 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; therefore, Chapter 781 of the 2009 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.