



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1411

(Patron – Martin)

LD #: 11103593

Date: 1/6/2011

Topic: Issuing bad checks

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 modifies § 18.2-181, related to the issuance of bad checks, to specify that this section includes any check, draft or order for payment of rent pursuant to a lease agreement under Chapter 13 or Chapter 13.2 of Title 55. Currently, a violation of § 18.2-181 is a Class 1 misdemeanor if the represented value is less than \$200; if the represented value is \$200 or more, the offense is a Class 6 felony.

Although the General Assembly has not modified § 18.2-181 since 1981, there is an Attorney General's opinion from 1979 that bears on this proposal. The question referred to language added in the 1978 session of the General Assembly: "Any person making, drawing, uttering or delivering any such check, draft or order in payment as a present consideration for goods or services for the purposes set out in this section shall be guilty as provided herein." It asked if this language was intended to include the issuance of a bad check for the rental of real estate. The opinion of the Attorney General was that, although the specific paragraph referenced in the question could not be construed to include the ordinary rental of property as "services," the first paragraph of the *Code* section provided sufficient authority for such prosecution because it "allows the prosecution of any person who issues a bad check with intent to defraud¹."

Analysis:

According to General District Court Automated Information System (CAIS) data for fiscal year (FY) 2009 and FY2010, the majority of offenders (86.7%) convicted of a misdemeanor for issuing a bad check under § 18.2-181 as the primary, or most serious, offense were not given an active term of incarceration to serve. The remaining 13.3% were given a local-responsible (jail) term, with a median sentence length of less than one month.

¹ Opinion of the Attorney General, 1979-1980 Va. AG 42.

According to FY2009 and FY2010 Sentencing Guidelines data, when convicted of a felony under § 18.2-181 as the primary, or most serious, offense, nearly half (44.8%) of the offenders did not receive an active term of incarceration. More than one-third (35.9%) of offenders were sentenced to a local-responsible (jail) term, with a median sentence length of six months. For the 19.4% of offenders who received a state-responsible (prison) term, the median sentence was 1.5 years.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal clarifies that issuing a bad check in payment of rent pursuant to a lease agreement may be prosecuted under § 18.2-181. However, based on the opinion of Virginia’s Attorney General, the issuance of a bad check in payment of rent may be prosecuted under the existing statute. Therefore, the proposal is not expected to increase the need for state-responsible (prison) bed space.

Local adult correctional facilities. The proposal is not expected to increase the need for local-responsible (jail) bed space.

Adult community corrections programs. The proposal is not expected to affect adult community corrections programs.

Virginia’s sentencing guidelines. Felony convictions under § 18.2-181 are covered by the sentencing guidelines. No adjustment to the sentencing guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), unless a minor has been emancipated pursuant to § 16.1-331, the minor cannot enter into a binding contract or establish his own residence (see § 16.1-334). Therefore, DJJ does not expect the proposal to increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. According to the Department of Juvenile Justice (DJJ), the proposal will not affect juvenile detention facility bed space needs.

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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