



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 409

(Patron – Watts)

LD #: 12101754

Date: 12/19/2011

Topic: Financial exploitation of elderly or incapacitated 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 890 of the 2011 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 modifies § 18.2-369 to add offenses relating to the financial exploitation of incapacitated adults and adults 60 years of age or older. The proposal defines “adult” as any person 60 years of age or older who resides in the Commonwealth, provided, however, “adult” may include nonresidents who are temporarily in the Commonwealth and who are in need of temporary or emergency protective services. The proposal makes it a Class 5 felony to knowingly exploit the impaired mental or physical capacity of an adult or incapacitated adult by deception, intimidation, undue influence, coercion, harassment, duress, or misrepresentation, to use, obtain, convert, or take control of, or endeavor to use, etc., the property or financial resources of the victim and to convert such money, etc., to the offender’s use or benefit. If a responsible person or a person who has a fiduciary relationship with the victim commits the violation, it is a Class 3 felony. The proposal overlaps with many existing felony property crimes, including grand larceny (§ 18.2-95), obtaining money or property by false pretenses (§ 18.2-178), forging and uttering (§ 18.2-172), and identity theft (§ 18.2-186.3).

The General Assembly has modified § 18.2-369, concerning the abuse and neglect of incapacitated adults, twice in the past ten years. In 2007, the General Assembly specified that the penalty for abuse or neglect of an incapacitated adult resulting in the victim’s death is Class 3 felony if a responsible person commits the offense. The 2004 General Assembly increased the penalty for abuse or neglect of an incapacitated adult resulting in serious bodily injury or disease by a responsible person from a Class 6 felony to a Class 4 felony.

Analysis:

According to calendar year (CY) 2010 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 183,022 offenses reported to police involving larceny, motor vehicle theft, stolen property offenses, false pretenses, counterfeiting/forgery, and impersonation (identity theft) during this time period. Of the total, 82,565 (45%) resulted in a loss of \$200 or more based on the value of the single costliest item that was lost in the incident. Of incidents resulting in a loss of \$200 or more, 10.4% involved victims aged 60 or older in CY2010. Comparable data for victims who would meet the definition of an incapacitated adult are not available.

Felony conviction data for property crimes rarely contain information regarding the age of the victim. The table below contains sentencing information for the crimes that may be 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	7,438	39%	35%	26%	2.0 yrs.
False pretenses (§ 18.2-178)	959	39%	30%	31%	1.7 yrs.
Forging and uttering (§ 18.2-172)	1,054	40%	33%	27%	1.5 yrs.
Identity theft - financial loss more than \$200 (§ 18.2-186.3)	86	39%	34%	27%	1.3 yrs.

Note: Analysis based on cases in which the crime was the primary (or most serious) offense at time of sentencing.
Data Source: FY2010 and FY2011 Sentencing Guidelines data

Impact of Proposed Legislation:

State adult correctional facilities. The proposed legislation creates new felony offenses associated with certain property crimes when the victim is an incapacitated adult or 60 years of age or older. The proposal also provides for enhanced penalties when the offender is a responsible person or a person who has a fiduciary relationship with the victim. As a result, 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. The net impact of the proposal on community corrections resources cannot be determined.

Virginia's sentencing guidelines. Because the proposal defines new felony offenses, convictions under the proposed modifications to § 18.2-369 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 (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.

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 890 of the 2011 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.

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