



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 24

(Patron – Stuart)

LD#: 12101015

Date: 12/19/2011

Topic: Entitlement fraud

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$3,694,072 (133 beds)
- **Local Adult Correctional Facilities:**
\$381,801 (37 beds)
- **Adult Community Corrections Programs:**
None (\$0)

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

Summary of Proposed Legislation:

The proposed legislation modifies several statutes relating to entitlement fraud. Existing *Code* establishes criminal and civil penalties for several behaviors that constitute entitlement fraud. For instance, soliciting or collecting excess payments for services and soliciting or receiving any remuneration in return for referring a person for items or services for which payment may be made, in whole or in part, under medical assistance are currently Class 6 felonies. Making false statements to obtain benefits of \$200 or more is punishable by up to 20 years imprisonment. The proposal establishes several mandatory minimum terms of incarceration relating to misdemeanor and felony public assistance fraud.

The proposal also bars individuals convicted of certain forms of entitlement fraud from receiving assistance in the future, to the extent allowable by federal law. In addition, the proposal requires judges to assess a civil penalty equal to three times the amount of benefits fraudulently received from state or local funds.

Analysis:

According to the General District Court Automated Information System (CAIS) database for fiscal years (FY) 2010 and 2011, a misdemeanor violation of §§ 18.2-186.2 (making false statements to obtain housing aid), 63.2-522 (fraudulently obtaining welfare assistance less than \$200), or 63.2-523 (unauthorized use of food stamps less than \$200) was the primary, or most serious, offense for 70 offenders. While most (88.6%) did not receive an active term of incarceration to serve after sentencing, the remaining 11.4% received a local-responsible (jail) term, with a median sentence of roughly 25 days. No offenders were convicted of a misdemeanor under § 32.1-321.4 for making false statements to obtain medical assistance less than \$200 in general district court during this time period.

The Circuit Court Automated Information System (CAIS) database for FY2010 and FY2011 indicates that an additional 168 offenders were convicted in circuit court for a misdemeanor violation of one or more of the statutes listed above. This number excludes appeals from lower courts and most of these offenders were likely indicted in circuit court because they were originally charged with a felony or the misdemeanor fraud charges accompanied a felony. The misdemeanor was the primary, or most serious, offense in 162 of these cases. The majority (95.7%) did not receive an active term of incarceration; however, seven offenders were sentenced to a local-responsible (jail) term with a median sentence of one month.

FY2010 and FY2011 Circuit Court CAIS data also indicate that 207 offenders were convicted of a felony under §§ 32.1-321.4 (false statements to obtain medical assistance \$200 or more), 63.2-522 (fraudulently obtaining welfare assistance \$200 or more), or 63.2-523 (unauthorized use of food stamps \$200 or more) during the two-year period. The felony fraud charge was the primary offense for 198 offenders. While 73.7% of these offenders did not receive an active term of incarceration, 19.7% were sentenced to a local-responsible (jail) sentence (with a median sentence of 7.0 months). The remaining 13 offenders were given a state-responsible (prison) term with a median sentence of 1.5 years.

Impact of Proposed Legislation:

State adult correctional facilities. By establishing a mandatory minimum of one year for offenders convicted of a felony under §§ 32.1-321.4, 63.2-522, or 63.2-523, the proposal is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. The impact is estimated to be 133 beds by FY2018. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$3,694,072.

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

FY13	FY14	FY15	FY16	FY17	FY18
40	97	119	129	132	133

Local adult correctional facilities. The language in the proposal that establishes a mandatory minimum term of one year for offenders convicted of felonies under certain sections of the *Code* would likely decrease the number of local-responsible (jail) beds needed for these offenders, since offenders who received a jail term in the past must be given a mandatory prison sentence under the proposal. However, by creating a mandatory minimum term of 180 days for offenders convicted of a misdemeanor under §§ 18.2-186.2, 32.1-321.4, 63.2-522, and 63.2-523, the proposal is expected to increase the need for local-responsible (jail) beds. The net impact is estimated to be an increase of 37 beds statewide, for a cost to the state of \$381,801 and \$408,648 to the localities.

Estimated Six-Year Impact in Local-Responsible (Jail) Beds

FY13	FY14	FY15	FY16	FY17	FY18
33	34	34	35	35	37

Adult community corrections resources. The proposal is not expected to increase the need for community corrections resources and will likely delay the need for services for offenders affected by the proposal, as they will most likely be staying in jail or prison longer prior to being released to the community.

Virginia's sentencing guidelines. Felony convictions under §§ 63.2-522 and 63.2-523 are covered by the sentencing guidelines. Felony convictions under § 32.1-321.4 are not currently covered by the guidelines as the primary, or most serious, offense. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. Since mandatory minimum terms do not apply to juvenile court adjudications, the Department of Juvenile Justice (DJJ) does not anticipate an impact upon juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. Since mandatory minimum terms do not apply to juvenile court adjudications, the Department of Juvenile Justice does not anticipate an impact on the bed space needs of juvenile detention facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$3,694,072 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.

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 2011.
2. Cost per prison bed was assumed to be \$27,688 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.*
3. Cost per jail bed was based on The Compensation Board's FY2010 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.19 per day or \$10,296 per year. The local cost was calculated by using the daily expenditure cost of \$70.01 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 \$30.17 per day or \$11,020 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, 2012, is phased in to account for case processing time.
2. Offenders convicted of a completed violation of the affected sections of the *Code* (as the primary or an additional offense) who were sentenced to less than the proposed mandatory minimum were assumed to serve the mandatory minimum term specified in the proposal. If an offender was convicted of multiple counts, the mandatory minimum terms were assumed to run consecutively.¹
3. Release dates were estimated based on the average rates at which inmates in the Department of Corrections' facilities were earning sentence credits as of December 31, 2010. For larceny and fraud offenders, this rate was 11.8%.

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¹ Recent analysis revealed that, in 96.9% of cases, judges set multiple mandatory minimum sentences to run consecutively (2010 Annual Report of the Virginia Criminal Sentencing Commission).