



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 431

#### *Amendment in the Nature of a Substitute*

#### *(Patrons Prior to Substitute – Stuart, Herring, and Vogel)*

LD #: 12105700

Date: 2/27/2012

Topic: Financial exploitation of 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:**  
Cannot be determined, likely to be small
- **Juvenile Detention Facilities:**  
Cannot be determined, likely to be small

\* 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 expands § 18.2-178 to include the financial exploitation of incapacitated adults. The proposal states that a person who, with the intent to defraud, obtains money or other property through the use of the victim's mental or physical incapacity is guilty of larceny. If the offender obtains the victim's signature to a writing, the false making whereof would be forgery, through the use of the victim's mental or physical incapacity with the intent to defraud the victim, he is guilty of a Class 4 felony. The proposal also defines mental or physical incapacity.

Currently, § 18.2-178 prohibits obtaining property by false pretenses with the intent to defraud the victim and makes this act punishable as larceny. If the offender obtains the victim's signature to a writing, the false making whereof would be forgery, by false pretenses with the intent to defraud, he is guilty of a Class 4 felony. The penalty for larceny of \$200 or more (not from a person) under § 18.2-95 includes a term of imprisonment from one to twenty years. Larceny of less than \$200 (not from a person) under § 18.2-96 is punishable as a Class 1 misdemeanor and carries a maximum term of 12 months imprisonment.

#### Analysis:

The proposed offenses would have the same penalty structure as the existing crimes defined in § 18.2-178. According to the most recent Sentencing Guidelines data for fiscal years 2010 and 2011, 1,306 offenders were convicted of a felony violation of § 18.2-178 for obtaining property with a value of \$200 or more by false pretenses. This offense was the primary, or most serious, offense in 1,047 of the cases. While 39.7% of these offenders did not receive an active term of incarceration to serve after sentencing, 30.8% were sentenced to a local-responsible (jail) term, with a median sentence length of seven months. The remaining 29.5% of offenders received a state-responsible (prison) term, for which the median sentence was approximately 1.7 years.

Sentencing Guidelines data for fiscal years 2010 and 2011 also indicate that 14 offenders were convicted of a Class 4 felony under § 18.2-178 for obtaining a signature to a writing by false pretenses. The fraud was the primary offense in nine of these cases. Five of the nine offenders did not receive an active term of incarceration and the remaining four offenders received a local-responsible (jail) term. The median sentence length for these offenders was five months.

Regarding the Department of Juvenile Justice (DJJ), Court Service Units serve as the point of entry into the juvenile justice system. An “intake” occurs when a juvenile is brought before a court service unit officer for one or more alleged law violations. The DJJ reports an average of 56 intake petitions per year for the three most recent fiscal years (FY2009 to FY2011) alleging a violation of § 18.2-178 by a person under the age of 18. The DJJ averaged just over two commitments to a juvenile correctional center each year for FY2009 to FY2011 where the most serious committing offense was a violation of § 18.2-178.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposed legislation makes obtaining property with the intent to defraud punishable as larceny when the act is accomplished through a victim’s mental or physical incapacity. In addition, under the proposal, obtaining the signature of any person to a writing through the victim’s mental or physical incapacity with the intent to defraud would be a Class 4 felony. 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 § 18.2-178 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, the legislative proposal may have an impact on juvenile correctional center bed space needs. While the actual impact on juvenile correctional center bed space needs cannot be determined, it is likely to be small.

**Juvenile detention facilities.** According to the Department of Juvenile Justice, the legislative proposal may have an impact on juvenile detention facility bed space needs. The actual impact on juvenile correctional center bed space needs cannot be determined but is likely to be small.

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**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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

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