



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 #: 12104967

Date: 2/2/2012

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
- **Juvenile Detention Facilities:**
Cannot be determined

* 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 proposal adds §§ 18.2-178.1 and 19.2-386.33, regarding the financial exploitation of incapacitated adults, to the *Code of Virginia*. The proposed § 18.2-178.1 provides that it is a felony to knowingly, without legal justification, by deception, intimidation, undue influence, coercion, harassment, duress, or misrepresentation, use, obtain, convert, or take control of an incapacitated adult's property or financial resources with the intent to permanently deprive the victim thereof. This offense would be punishable by one to twenty years of imprisonment and a fine of not more than \$2,500. If the violation is committed by a caregiver or a person in a position of trust, it is a Class 3 felony. The proposed § 18.2-178.1 also defines the terms "caregiver," "financial resources," "position of trust," "property," "undue influence," and "incapacitated adult." 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 proposed § 19.2-386.33 provides for the lawful seizure by a law-enforcement officer and forfeiture to the Commonwealth of property used in connection with the financial exploitation of incapacitated adults.

Analysis:

Felony conviction data for property crimes rarely contain information that would identify crimes involving incapacitated adults. The table below contains sentencing information for the crimes that may be affected by the proposal irrespective of victim characteristics.

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. By creating new felony offenses associated with certain property crimes when the victim is an incapacitated adult and providing for enhanced penalties when the offender is a caregiver or a person in a position of trust, the proposal 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 § 18.2-178.1 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 impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

Juvenile detention facilities. According to the Department of Juvenile Justice (DJJ), the effect of the proposal on the bed space needs of juvenile detention facilities cannot be determined.

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.