



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2065

Amendment in the Nature of a Substitute (Patron Prior to Substitute – Peace)

LD#: 13105096

Date: 2/12/2013

Topic: Offenses committed by inmates or persons confined in juvenile correctional centers

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 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends several sections of the *Code of Virginia*, relating to offenses committed by inmates or persons confined in juvenile correctional centers.

Specifically, the proposal modifies § 18.2-48.1, relating to abduction by prisoners, to make it a Class 3 felony for a person committed to the Department of Juvenile Justice (DJJ) in any juvenile correctional center to abduct or take any person hostage. In addition, under the proposal, an individual who provides a cellular telephone to an inmate at a juvenile correctional center would be guilty of a Class 6 felony. The juvenile inmate who possesses the cellular telephone would be subject to the same penalty.

The proposal also expands the applicability of several other misdemeanor and felony offenses related to prisoners, including communication with prisoners with the intent to disrupt institutional operations, delivery of articles to prisoners, and permitting a prisoner to escape. The proposed modifications to § 18.2-477.2 increase the penalty for juveniles in a juvenile correctional center who commit any of the offenses specified in § 53.1-203, relating to inmate behavior and escape, from a Class 1 misdemeanor to a Class 5 or Class 6 felony. In addition, the proposal expands § 18.2-57(C) to make the assault or assault and battery of any person directly involved in the care, treatment, or supervision of inmates in the custody of the Department of Corrections (DOC) subject to the same penalties that apply when the victim is a law enforcement officer, correctional officer, firefighter, etc.; currently, only DOC employees are covered by this provision.

Analysis:

The proposal expands several *Code* sections related to prisoners or confined persons to explicitly include acts committed in juvenile correctional centers. Adults could be prosecuted for violations of proposed provisions, for example, by delivering drugs, a cell phone, or other unapproved item to

confined juveniles, or by allowing an escape. This could result in additional felony convictions in Virginia's circuit courts. Data are insufficient, however, to identify the number of incidents that would be affected by the proposal.

Confined juveniles could also be charged with felony and misdemeanor violations under the modified provisions. This would include possessing a cell phone, abduction by an inmate, etc. For offenses specified in § 53.1-203, the punishment would increase from a Class 1 misdemeanor to a Class 5 or Class 6 felony. Insufficient data are available to identify the number of incidents that would be affected by the proposal.

According to the fiscal year (FY) 2011 and FY2012 Sentencing Guidelines database, 1,006 offenders were convicted of a felony for assault or assault and battery of a law enforcement officer, correctional officer, firefighter, etc., under § 18.2-57(C) during the two-year period. In 815 of the cases, the assault was the primary, or most serious, offense. Of these, nearly two-thirds (62.7%) received a local-responsible (jail) sentence, with a median sentence length of seven months. For the 35.6% of offenders who were given a state-responsible (prison) term, the median sentence length was 1.5 years. The remaining 1.7% were sentenced to the time served by the offender while awaiting trial.

According to the Department of Corrections, as of the end of November 2012, there are 9,464 DOC employees who have direct contact with inmates. Based on data from January 2012, roughly 75% of these individuals are correctional officers as defined in § 53.1-1; the remainder are other DOC employees who interact with inmates. The DOC reports that there were 44 inmate-on-staff assaults in FY2011 and 46 inmate-on-staff assaults in FY2012. It is not known how many of these incidents involved correctional officers already covered by § 18.2-57(C) versus other individuals who would be covered under the proposal. All of these cases were referred by DOC's Inspector General for prosecution. According to the DOC, there are approximately 3,172 volunteers who have direct contact with inmates.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal could result in additional felony convictions in Virginia's circuit courts. This could include adults prosecuted for violations under the proposal, as well as juveniles transferred to circuit court for prosecution as an adult (the reclassification of some misdemeanors to felonies would make some juvenile offenders eligible for transfer to circuit court under § 16.1-269.1). Circuit court judges can employ a number of sentencing options that are not available to juvenile court judges, including incarceration in adult prison and jail facilities. Moreover, mandatory minimum penalties apply to juveniles convicted in circuit court and, if a charge carries a mandatory minimum, the circuit court judge must impose the mandatory time. Additionally, per § 16.1-271, juveniles who are convicted as adults in circuit court must be treated as adults for subsequent criminal acts and in any allegations of delinquency that are pending in juvenile court at the time of the circuit court conviction.

Thus, the proposed legislation may increase the future state-responsible (prison) bed space needs of the Commonwealth. The number of additional felony convictions that could result from the proposal cannot be estimated; therefore, the impact of the proposal cannot be determined.

Local adult correctional facilities. The proposal could also increase local-responsible (jail) bed space needs; however, the size of the impact cannot be determined.

Adult community corrections resources. Because the proposal may result in additional felony offenders on adult community supervision, the proposal may have an impact on local and state community corrections resources. However, the full cost of the impact on adult community corrections cannot be estimated.

Virginia's sentencing guidelines. Felony convictions under §§ 18.2-57(C) (assault on a law enforcement officer, etc.), 53.1-203(1) (escape from a correctional facility), and 53.1-203(6) (possession of a Schedule III drug or marijuana by a prisoner) are covered by the sentencing guidelines. Other prisoner-related offenses are not covered as the primary (or most serious) offense; however, a conviction under one of these provisions may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), it is possible that a juvenile placed in a juvenile correctional center could be subject to the proposed amendments. As such, the length of stay for a juvenile may increase. Therefore, according to the Department of Juvenile Justice, the legislative proposal may have an impact on juvenile correctional center bed space needs. However, the magnitude of the impact on juvenile correctional center bed space needs cannot be estimated.

Juvenile detention facilities. The Department of Juvenile Justice reports that while the legislative proposal may have an impact on the bed space needs of juvenile detention facilities, the magnitude of the impact cannot be estimated.

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 3 of the Acts of Assembly of 2012, Special Session I, 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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