



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 793 (Patron – Garrett)

LD#: 13100713

Date: 11/5/2012

Topic: Election fraud

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined, likely to be small
- **Adult Community Corrections Programs:**
Cannot be determined, likely to be small

- **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:

This proposal would create § 24.2-1004.1 and make it a Class 6 felony to solicit one or more people to violate the provisions of § 24.2-1004, related to illegal voting. The penalty is increased to a Class 5 felony if the offender solicits six or more violations. Under § 24.2-1004, illegal voting includes:

- wrongfully voting (Class 1 misdemeanor);
- voting more than once in the same election (Class 6 felony);
- procuring, assisting or inducing another to vote more than once (Class 6 felony);
- voting, knowing one is not qualified to vote (Class 6 felony);
- procuring, assisting or inducing another to vote, when not qualified to vote (Class 6 felony);
- registering with more than one address (Class 6 felony); or
- procuring, assisting or inducing another to register to vote with more than one address (Class 6 felony).

Currently, under § 18.2-29, commanding, entreating, or otherwise attempting to persuade an adult to commit any felony, other than murder, is a Class 6 felony and soliciting a juvenile to commit any felony, other than murder, is a Class 5 felony. In addition, common law solicitation to commit a misdemeanor is punishable as a Class 1 misdemeanor, pursuant to § 1-200.

Since, under § 18.2-29, it is currently a Class 6 felony to solicit an adult to commit a felony violation of § 24.2-1004, the proposal is only expected to impact individuals who solicit another to wrongfully vote (currently a Class 1 misdemeanor) or who solicit adults to commit six or more felony violations of § 24.2-1004 (a Class 6 felony increased to a Class 5 felony, under the proposal).

Analysis:

According to the General District Court Automated Information System (CAIS) for fiscal year (FY) 2011 and FY2012, six offenders were convicted of the misdemeanor offense of wrongfully voting in violation of § 24.2-1004(A). While four of the offenders did not receive an active term of incarceration, two offenders received a local-responsible (jail) sentence of 10 days. The Circuit Court Automated Information System for FY2011 and FY2012 indicates that there were no felony convictions under § 24.2-1004 during this time period.

According to the Circuit Court Automated Information System for FY2011 and FY2012, 27 offenders were convicted of Class 6 felony under § 18.2-29 for soliciting an adult to commit a non-homicide felony. The solicitation was the primary, or most serious, offense in 16 cases. Of these 16 offenders, eight did not receive an active term of incarceration to serve after sentencing. While four of the offenders received local-responsible (jail) sentences, with a median sentence of 5.5 months, the four remaining offenders were sentenced to state-responsible (prison) terms, with a median sentence of 1.1 years. Data are insufficient to determine if any of these offenses were relating to voting violations defined in § 24.2-1004.

Impact of Proposed Legislation:

State adult correctional facilities. Because it creates new felony offenses and increases the maximum sentence for certain offenses, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing data do not provide sufficient detail to estimate the number of new felony convictions, or potentially longer sentences, that could result from enactment of the proposal. Therefore, the impact on prison bed space needs cannot be determined. Any impact, however, is likely to be small.

Local adult correctional facilities. Similarly, the proposal may increase the local-responsible (jail) bed space needs of the Commonwealth. However, existing data do not provide sufficient detail to estimate the number of offenders or increase in sentence length. While the impact on jail bed space needs cannot be determined, it is likely to be small.

Adult community corrections programs. Because the proposal could result in additional felony convictions and subsequent supervision requirements for additional offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be determined. Any impact is likely to be small.

Virginia's sentencing guidelines. Because the proposal creates new felony offenses, convictions under the proposed section of the *Code* 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. The Department of Juvenile Justice reports that the proposal's impact 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 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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