



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1447 (Patron – McQuinn)

LD#: 15102353

Date: 12/23/2014

Topic: Foreclosure procedures

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Programs:**
None (\$0)

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

* Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposal modifies several sections of the *Code of Virginia* relating to foreclosure procedures. The proposal adds § 55-59.6, which establishes a civil penalty of \$5,000 for each violation in which a person i) knowingly makes, uses, or causes to be made or used a false or fraudulent record, document, or statement, or ii) knowingly swears or affirms falsely to any matter in support of any foreclosure on property. The proposal authorizes Commonwealth's Attorneys and city or county attorneys to bring action to recover the civil penalty. Under the proposal, the owner of the property subject to foreclosure may bring a civil action against the individual who perpetrated the fraud to receive compensatory damages, punitive damages, and attorney's fees. The proposal states that the civil penalties shall apply in addition to applicable criminal penalties for forgery under §§ 18.2-168 and 18.2-172, perjury under § 18.2-434, or any other criminal penalty.

Analysis:

According to fiscal year (FY) 2013 and FY2014 Sentencing Guidelines data, 613 offenders were convicted under § 18.2-168 for forging or uttering a public record (in these cases, the violation of § 18.2-168 was the primary, or most serious, offense). One-third (33%) of these offenders did not receive an active term of incarceration to serve after sentencing. Nearly 40% were given a local-responsible (jail) term, for which the median sentence was seven months. For the remaining 27% who received a state-responsible (prison) term, the median sentence was 1.5 years.

Another 847 offenders were convicted of forgery or uttering in violation of § 18.2-172 (as the primary offense). Of these offenders, 35% did not receive an active term of incarceration to serve after sentencing, while another 33% received a jail term with a median sentence length of six months. Nearly 32% were given a prison term and, for these offenders, the median sentence was 1.6 years.

Sentencing Guidelines data for FY2013 and FY2014 indicate that 66 offenders were convicted of a Class 5 felony for perjury under § 18.2-434 (in these cases, perjury was the primary offense at sentencing). Nearly half (47%) of these offenders did not receive an active term of incarceration to serve after sentencing. Approximately 36% of the offenders were given a jail term, for which the median sentence was six months. The remaining 17% received a prison term with a median sentence of two years.

Data are not sufficiently detailed to identify the number of forgery, uttering or perjury offenses involving foreclosures.

Impact of Proposed Legislation:

State adult correctional facilities. The proposed § 55-59.6 specifies civil penalties and does not modify existing criminal penalties, nor does the proposal expand the number or type of behaviors eligible for criminal prosecution. As a result, it is unlikely that the proposal will impact the future state-responsible (prison) bed space needs of the Commonwealth.

Local adult correctional facilities. Similarly, the proposal is not expected to increase local-responsible (jail) bed space needs.

Adult community corrections programs. The proposal is not expected to affect adult community corrections resources.

Virginia's sentencing guidelines. The sentencing guidelines cover one perjury offense under § 18.2-434 as well as violations of §§ 18.2-168 and 18.2-172 that are processed in Virginia's circuit courts. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ) the proposal is not expected to increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 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.

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