



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1944 (Patron – McClellan)

LD#: 15103441

Date: 1/11/2015

Topic: Determination of indigency

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

**Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the 2014 Acts of Assembly, 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 §§ 19.2-159 and 19.2-163 of the *Code of Virginia*, relating to court-appointed counsel and determinations of indigency. The proposed modifications to § 19.2-159 would change the way in which judges determine whether a defendant is indigent for the purpose of appointing defense counsel. While establishing expected costs for representation, the proposal would modify language relating to expenses that must be considered by the court. The proposal also amends the measure used by the court to determine if a defendant is ineligible for the appointment of counsel. In addition, the proposal would permit the court to require a defendant to submit an affidavit detailing financial resources and documentation of his income. By repealing § 19.2-163.4:1 and modifying § 19.2-163, the proposal would also remove the existing requirement that all convicted indigent defendants pay the costs associated with their defense. However, pursuant to the proposed subsection 1 of § 19.2-159, offenders who engaged in fraud during the determination of their eligibility for the appointment of counsel would be required to pay such costs.

Currently, under § 19.2-161, individuals charged with a misdemeanor punishable by confinement in jail who falsely swear or execute the statement regarding indigency provided for in § 19.2-159 are guilty of a Class 1 misdemeanor. If the person is charged with a felony offense, the penalty is increased to a Class 5 felony.

Analysis:

According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2013 and FY2014, eight offenders were convicted of a felony under § 19.2-161 for making a false statement regarding

indigence. This offense was the primary, or most serious, offense in five cases. While one of these offenders received a state-responsible (prison) term of 1.5 years, the remaining four offenders were sentenced to local-responsible (jail) terms, with a median sentence of six months.

General District Court CMS data for FY2013 and FY2014 indicate that two offenders were convicted of a misdemeanor under § 19.2-161 for making a false statement of indigence. Neither of these offenders received an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. By modifying the way in which judges determine whether a defendant is indigent for the purpose of appointing defense counsel, the proposal potentially expands the amount of information that must be provided by the defendant. Should additional felony convictions under § 19.2-161 result, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, existing data sources do not provide sufficient detail to estimate the number of new felony convictions that may result from enactment of the proposal. Therefore, the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal could affect the local-responsible (jail) bed space needs of the Commonwealth. However, the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in additional convictions with supervision requirements for the offenders, the proposal may affect 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 quantified.

Virginia's sentencing guidelines. Felony convictions under § 19.2-161 are not covered by the sentencing guidelines when this offense is the primary, or most serious, offense in a case. However, a conviction under this provision can 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, the proposal is not expected to increase juvenile correctional center 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 cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the 2014 Acts of Assembly, 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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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