



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2115 (Patron – Mason)

LD#: 15101702

Date: 12/30/2014

Topic: Computer fraud

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**

** 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:

Currently, under § 18.2-152.3, it is a Class 5 felony (punishable by imprisonment of one to ten years) to use a computer or computer network without authority to obtain property or services by false pretenses, to commit larceny, or to convert the property of another if the value of the property or service is \$200 or more. Under the proposal, the penalty for this offense would be increased to a Class 4 felony (punishable by imprisonment of two to ten years) if the offense involved a victim age 65 or older.

The proposal also adds § 18.2-429.1 to the *Code of Virginia* regarding telephone fraud. Under the proposal, it would be a Class 5 felony to use a telephone to obtain property or services by false pretenses, to commit larceny, or to convert the property of another if the value of the property or service is \$200 or more. If the offense involved a victim age 65 or older, the penalty for this offense would be increased to a Class 4 felony. Under the proposal, the offense would be a Class 1 misdemeanor if the value of the property or service is less than \$200.

Analysis:

According to Circuit Court Case Management System (CMS) data for fiscal year (FY) 2013 and FY2014, 14 offenders were convicted of a felony under § 18.2-152.3 for computer fraud during this time period. This offense was the primary, or most serious, offense in four of the cases. Of these, none received an active term of incarceration to serve after sentencing. Existing databases do not contain sufficient detail to identify the number of fraud or larceny convictions that were initiated using a telephone or the number of victims age 65 or older.

Impact of Proposed Legislation:

State adult correctional facilities. By increasing the penalty for felony computer fraud from a Class 5 felony to a Class 4 felony for cases involving a victim age 65 or older and establishing Class 5 and Class 4 felonies for certain acts of telephone fraud, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Specifically, increasing the statutory minimum penalty from one to two years for offenders who could already be prosecuted for a felony under § 18.2-152.3 may impact bed space needs through jury sentencing. Juries, by law, must impose at least the statutory minimum sentence specified in the *Code* and are not permitted to reduce or suspend any portion of the sentence. A judge may suspend a portion of the jury-imposed sentence, but judges rarely do so. The databases available to the Commission do not contain sufficient detail to estimate the number of instances in which the enhanced penalty would apply or the number of additional felony convictions that may result from enactment of the proposal. Therefore, the magnitude of the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. The proposal may also increase the local-responsible (jail) bed space needs of the Commonwealth. However, the magnitude of the impact cannot be determined.

Adult community corrections resources. Because the proposal could result in new felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for state community corrections resources. Since the number of cases that may be affected by the proposal cannot be determined, the potential impact on community corrections cannot be quantified.

Virginia's sentencing guidelines. Felony convictions under § 18.2-152.3 are not covered by the sentencing guidelines when the offense is the primary, or most serious, offense in a case. As a new felony offenses, convictions under the proposed § 18.2-429.1 would not be covered by the guidelines. 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. The Department of Juvenile Justice reports that, while the proposal could cause an increase in commitments, the impact of the proposal on bed space needs for juvenile correctional centers cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on detention center bed space needs 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 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.