



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 644 (Patron – McEachin)

LD#: 14103697

Date: 1/14/2014

Topic: Educational neglect of students with disabilities

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 806 of the 2013 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal adds § 18.2-371.1:01, relating to the educational neglect of students with disabilities between the ages of two and 21. Under the proposal, any educational professional, education-related service provider, or other person responsible for educational service delivery whose acts or failures to provide services results in the academic, physical and emotional harm to a student with disabilities would be guilty of “educational neglect,” a Class 6 felony. If the acts or failures were so gross as to show a reckless disregard for human life, the penalty would increase to a Class 4 felony. Fraudulently altering an education plan or forging a parent’s signature to a plan would also be punishable as a Class 4 felony and would result in the loss of any professional educational related license.

Existing statutes do not currently establish criminal penalties for educational neglect and fraudulently altering an education plan. The proposed Class 4 felony offense under § 18.2-371.1:01(C), relating to forging a parent’s signature to an education plan, may overlap with existing penalties for forgery. Currently, under § 18.2-172, any person who forges any writing to the prejudice of another’s right or who knowingly utters a forged writing is guilty of a Class 5 felony. Pursuant to § 18.2-168, forgery or uttering of a public record is a Class 4 felony.

Analysis:

Existing data do not contain sufficient detail to determine the number of cases that would be affected by the proposal. However, offenders in violation of the forgery portion of the proposal may be sentenced similarly to those who are currently convicted under § 18.2-168 for forging or uttering a public record.

According to fiscal year (FY) 2012 and FY2013 Sentencing Guidelines data, 768 offenders were sentenced for forging or uttering a public record in violation of § 18.2-168 during this time period. The forging or uttering conviction was the primary, or most serious, offense in 688 of the cases. While more than one-third (38.8%) of these offenders were sentenced to a local-responsible (jail) term, with a median sentence of seven months, another one-third (33.7%) did not receive an active term of incarceration to serve after sentencing. The remaining 27.5% received a state-responsible (prison) term, with a median sentence of 1.5 years.

Impact of Proposed Legislation:

State adult correctional facilities. Because it creates new felony offenses, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not contain sufficient detail to estimate the number of new felony convictions that may result from enactment of the proposal. Therefore, the magnitude of the impact on prison bed space needs cannot be quantified.

Local adult correctional facilities. Similarly, the proposal may increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of 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 quantified.

Virginia's sentencing guidelines. As new felony offenses in the *Code of Virginia*, convictions under the proposed § 18.2-371.1:01 would not be covered by the sentencing guidelines as the primary, or most serious, offense in a case. However, convictions under this section 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. The Department of Juvenile Justice reports the impact of this proposal on bed space needs for juvenile correctional centers cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that this 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 806 of the 2013 Acts of Assembly 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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