



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1138

(Patron – Mason)

LD#: 16101927

Date: 12/14/2015

Topic: Computer crimes added to the Racketeer Influenced and Corrupt Organization Act

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 665 of the 2015 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends § 18.2-513 relating to the Virginia Racketeer Influenced and Corrupt Organization (RICO) Act. Under the proposal, “racketeering activity” would be expanded to include violations of the Computer Crimes Act (§ 18.2-152.1 et seq.). The Computer Crimes Act establishes several misdemeanor and felony offenses involving computers. These include causing a computer to malfunction (§ 18.2-152.4(A,2)), harassment by computer (§ 18.2-152.7:1), and using a computer to commit larceny (§ 18.2-152.3) or certain fraud offenses (§ 18.2-152.14).

Currently, racketeering activity means to commit, attempt or conspire to commit, or to solicit, coerce or intimidate another to commit two or more of the following offenses: murder, voluntary manslaughter, selected assaults, kidnapping, crimes by gangs, shooting offenses, terrorism, obstruction of justice, violations of the Waste Management Act, injuries caused by prisoners, robbery, certain arsons, burglary, grand larceny, embezzlement, several fraud offenses, money laundering, specific drug offenses, paramilitary activity, perjury, bribery, transmitting illegal money, medical assistance fraud, dog fighting, certain cigarette tax violations, and commercial sex trafficking.

Under the proposal, penalties for a RICO violation remain the same. Any person or enterprise convicted of racketeering is guilty of a felony that is punishable by imprisonment for not less than 5 years nor more than 40 years and a fine of not more than \$1 million. A second or subsequent offense is punishable as a Class 2 felony (20 years to life in prison) and a fine of not more than \$2 million. The transmission of money derived from, or traceable to, racketeering activity is punishable as a Class 6 felony (1-5 years). The General Assembly passed the RICO Act in 2004; amendments to § 18.2-513 were made most recently in 2013 (adding contraband cigarette violations) and 2015 (adding commercial sex trafficking).

Analysis:

Existing data sources do not contain sufficient detail to estimate the number of cases that will be affected by the proposal. However, individuals convicted of a felony for a RICO offense associated with violations of the Computer Crimes Act may be sentenced similarly to those convicted under the existing provisions of § 18.2-513, et seq.

According to fiscal year (FY) 2014 and FY2015 Circuit Court Case Management System (CMS) data, six offenders were convicted of racketeering under the Virginia RICO Act as their primary (most serious) offense at sentencing. One offender did not receive an active term of incarceration to serve after sentencing. Another offender was sentenced to a local-responsible (jail) term of six months. The three remaining offenders were sentenced to state-responsible (prison) terms, with a median sentence length of 1.8 years.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding existing felony offenses, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, the number of additional felony convictions, or potentially longer sentences, that may result from the proposal cannot be estimated; therefore, the impact of the proposal on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal may also 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 estimated, the potential impact on community corrections resources cannot be determined.

Virginia's sentencing guidelines. Convictions under § 18.2-513, et seq., are not covered by the sentencing guidelines when these offenses are the primary, or most serious, offense in a case. A conviction under one of these provisions, however, could augment the guidelines recommendation if the most serious offense at sentencing is a covered offense. No adjustment to the sentencing guidelines would be 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 665 of the 2015 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.