



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 196

(Patron – Lucas)

LD #: 16100743

Date: 12/07/2015

Topic: Tax returns subject to perjury

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 adds § 58.1-114 to the *Code of Virginia*. Under the proposal, any person who knowingly subscribes as true a tax return that contains any material matter that he or she does not believe is true would be guilty of perjury. Pursuant to § 18.2-434, perjury is a Class 5 felony and is punishable by one to ten years imprisonment in a state correctional facility.

Title 58.1 of the *Code* currently contains several civil and criminal penalties relating to false statements on tax returns. Under § 58.1-11, for instance, any person who willfully subscribes any state or local tax return which he or she does not believe to be true and correct as to every material matter is guilty of a Class 1 misdemeanor. Any person who, with the intent to defraud the Commonwealth, makes a false statement in an income tax return is guilty of a Class 6 felony (§ 58.1-348). A prosecution under this section must be commenced within five years next after the commission of the offense. Pursuant to § 58.1-452, any officer of any corporation who makes a fraudulent return or statement with intent to evade the payment of income taxes is guilty of a Class 6 felony. This section also contains a five year statute of limitations.

Section 58.1-498, relating to estimated income tax, makes it a Class 1 misdemeanor for a person to file a return, declaration, or report that he or she does not believe to be true and correct as to every material matter. Pursuant to § 58.1-636, making a false or fraudulent return with intent to evade retail sales and use tax is a Class 1 misdemeanor. Individuals who knowingly and with the intent to defraud, mislead, or deceive make a materially false statement in a return associated with cigarette taxes are guilty of a Class 6 felony (§ 58.1-1008.2). Title 58.1 also establishes a Class 1 misdemeanor for making a false statement in a return required under the Virginia Fuels Tax Act (§ 58.1-2272) or relating to the motor vehicle fuels sales tax in certain transportation districts (§ 58.1-2299.9).

The proposal may also overlap with existing penalties for forgery of a public record. Under § 18.2-168, any person who forges a public record, or certificate, return, or attestation, of any public officer or public employee, in relation to any matter wherein such certificate, etc., may be received as legal proof is guilty of a Class 4 felony (punishable by imprisonment of two to ten years). This section of the *Code* also applies to knowingly uttering or attempting to employ as true a forged record, certificate, return, or attestation.

Analysis:

Existing data do not contain sufficient detail to determine the number of cases that would be affected by the proposal. However, affected offenders may be sentenced similarly to those who are currently convicted of perjury under § 18.2-434 for falsely swearing an oath.

Sentencing Guidelines data for fiscal year (FY) 2014 and FY2015 indicate that 113 offenders were convicted of a Class 5 felony for falsely swearing an oath under § 18.2-434. The perjury offense was the primary, or most serious, offense at sentencing in 82 of the cases. Nearly half (46.3%) of these offenders did not receive an active term of incarceration to serve after sentencing. More than one-third (37.8%) of the offenders were given a local-responsible (jail) term, for which the median sentence was six months. The remaining 15.9% received a state-responsible (prison) term with a median sentence of 1.5 years.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal expands the applicability of perjury, which is punishable as a Class 5 felony, to include instances in which a person subscribes as true a tax return that contains a material matter that he or she does not believe is true. If the proposal applies to circumstances beyond those that may currently be prosecuted as a Class 4 felony under § 18.2-168 for forgery of a public record, 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, or potentially longer sentences, 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 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 a new felony, convictions under the proposed statute would not be covered by the sentencing guidelines when this crime is the primary (most serious) offense. Conviction for such an offense, however, could 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 (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.

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