



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1788 (Patron – Yancey)

LD #: 17102285

Date: 1/3/2017

Topic: Exploitation of incapacitated persons

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Direct Care:**
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 780 of the 2016 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal modifies § 18.2-178.1, relating to the financial exploitation of incapacitated persons. Currently, any individual who knows or should know that another person suffers from a mental incapacity and who, through the use of the victim's mental incapacity, takes, obtains, or converts money or property belonging to that person is guilty of a Class 1 misdemeanor if the value of the money or property is less than \$200. If the value of the money or property is \$200 or more, the offense is a felony punishable by one to 20 years in prison. Under the proposal, the provisions of § 18.2-178.1 would be expanded to include any person incapacitated as the result of mental illness, intellectual disability, physical illness or disability, advanced age, or other cause that prevents him from understanding the nature or consequences of the transaction or disposition of money or other thing of value involved in such offense. Section 18.2-178.1 was passed by the 2013 General Assembly and became effective on July 1, 2013.

The proposal also amends § 18.2-369, relating to the abuse and neglect of incapacitated adults. Currently, any responsible person who abuses or neglects an incapacitated adult in violation of this section is guilty of a Class 1 misdemeanor if the abuse or neglect does not result in serious bodily injury or disease; any person who is convicted of a second or subsequent offense is guilty of a Class 6 felony. If a responsible person abuses or neglects an incapacitated adult and such abuse or neglect results in serious bodily injury or disease, the offender is guilty of a Class 4 felony; if death occurs as the result of the abuse, the offender is guilty of a Class 3 felony. The proposal modifies § 18.2-369 to limit the Class 1 misdemeanor penalty to cases where the abuse or neglect does not result in any bodily injury or serious bodily injury or disease to the incapacitated adult; if the abuse or neglect results in any bodily injury other than serious bodily injury, the offender would be guilty of a Class 6 felony. The penalties for other violations of this section would not change.

Analysis:

According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2015 and FY2016, 12 offenders were convicted of a felony under § 18.2-178.1 for financial exploitation of a mentally incapacitated person with a value of \$200 or more. The financial exploitation conviction was the primary, or most serious, offense in all of the cases. Seven (58%) of these offenders received a local-responsible (jail) term, with a median sentence of three months. One offender received a state-responsible (prison) term of five years. The remaining four offenders did not receive an active term of incarceration to serve after sentencing.

Furthermore, 14 offenders were convicted of a felony violation of § 18.2-369 for abusing or neglecting an incapacitated adult during this time period. This offense was the primary offense in 11 cases. Nine offenders were convicted of abuse or neglect resulting in serious bodily injury or disease; of these, two offenders (22%) were sentenced to serve six and ten months in jail, respectively. Another four offenders (45%) were sentenced to prison terms, with a median sentence of 2.5 years. The remaining three offenders (33%) did not receive an active term of incarceration to serve after sentencing. One offender was convicted of a second or subsequent offense under this section and did not receive an active term of incarceration to serve after sentencing. One additional offender, who was convicted of abuse or neglect resulting in death, was sentenced to ten years imprisonment.

General District Court CMS data for FY2015 and FY2016 indicate that nine offenders were convicted of a misdemeanor under § 18.2-178.1 for financial exploitation of mentally incapacitated persons involving less than \$200. Seven of these offenders did not receive an active term of incarceration to serve after sentencing. The two offenders who were sentenced to a local-responsible (jail) term received 10 days and 14 days, respectively. During the same time period, ten offenders were convicted of misdemeanor abuse or neglect of an incapacitated adult under § 18.2-369. Of these, seven offenders (70%) were sentenced to serve jail terms with a median sentence of 1.2 months. The remaining three offenders did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of § 18.2-178.1 and elevating certain misdemeanor violations of § 18.2-369 to Class 6 felonies, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing data sources do not contain sufficient detail to estimate 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. Similarly, the proposal may also increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be determined.

Adult community corrections resources. Because the proposal could result in additional felony convictions and subsequent supervision requirements for additional 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 determined.

Virginia's sentencing guidelines. Convictions under §§ 18.2-178.1 and 18.2-369 are not covered by the sentencing guidelines as the primary (most serious) offense in a case; however, convictions under these sections 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 direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) 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 780 of the 2016 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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