



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1378

(Patron – Mason)

LD#: 17102146

Date: 1/6/2017

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 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 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 certain violations of the Computer Crimes Act (§§ 18.2-152.3, 18.2-152.3:1, 18.2-152.4, 18.2-152.5, 18.2-152.5:1, and 18.2-152.6). The Computer Crimes Act establishes several misdemeanor and felony offenses. These include using a computer to commit fraud (§ 18.2-152.3), causing a computer to malfunction (§ 18.2-152.4(A,2)), computer invasion of privacy (§ 18.2-152.5), and using a computer to gather identifying information by deception (§ 18.2-152.5:1).

Currently, racketeering activity is defined as committing, attempting or conspiring to commit, or soliciting, coercing or intimidating 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) 2015 and FY2016 Circuit Court Case Management System (CMS) data, 10 offenders were convicted of racketeering under the Virginia RICO Act as their primary (most serious) offense at sentencing. Two offenders 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 seven remaining offenders were sentenced to state-responsible (prison) terms, with a median sentence length of two 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 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.