



## **Fiscal Impact Statement for Proposed Legislation**

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### **Virginia Criminal Sentencing Commission**

#### **House Bill No. 1109** **(Patron – Tran)**

**LD#:** 18104600

**Date:** 01/09/2018

**Topic:** Payment of overtime

#### **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 836 of the 2017 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

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#### **Summary of Proposed Legislation:**

The proposal amends § 40.1-29 of the *Code of Virginia*, relating to the failure to pay wages and adds § 40.1-29.1 to define payment of wages for overtime work. Under the proposal, employers are to pay employees who are entitled to overtime compensation pursuant to 29 U.S.C. § 207 at a rate not less than one and one-half times the employee's regular rate of pay for any hours worked in excess of 40 hours in any one workweek. In addition, employers are to pay twice the employee's regular rate of pay for 1) any hours worked in excess of 12 hours in one workday, and 2) any hours worked on the seventh day of work in any workweek to the extent that the hours worked on such day exceed 40 hours worked in such week.

Currently, under § 40.1-29, in addition to civil penalties, an employer who willfully and with intent to defraud fails or refuses to pay wages is guilty of a Class 1 misdemeanor if the value of the unpaid wages is less than \$10,000. If the combined value of the unpaid wages is \$10,000 or more, the penalty is increased to a Class 6 felony. A second or subsequent conviction, regardless of the value of the wages, is a Class 6 felony. For purposes of this section, the determination as to the value of the wages is made by combining all wages the employer failed or refused to pay which, under the proposal, would include the newly-defined § 40.1-29.1 related to overtime pay.

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#### **Analysis:**

According to fiscal year (FY) 2016 and FY2017 General District Court Case Management System data, one offender was convicted of two misdemeanor counts under § 40.1-29 for unlawfully withholding

wages. The offender was sentenced to a 12-month local-responsible (jail) term for each count. However, upon appeal to Circuit Court, the charges were nolle prossed.

Circuit Court CMS data for FY2012 through FY2017 indicate that there were three felony convictions under § 40.1-29 during this time period. One offender was convicted of all three counts of withholding wages of \$10,000 or more. The offender did not receive an active term of incarceration.

The proposal would establish higher standards for overtime pay than currently required by the U.S. Department of Labor. Based on the U.S. Labor Standards Act (FLSA), “unless exempt, employees covered by the Act must receive overtime pay for hours worked over 40 in a workweek at a rate not less than time and one-half their regular rates of pay. There is no limit in the Act on the number of hours employees aged 16 and older may work in any workweek. The Act does not require overtime pay for work on Saturdays, Sundays, holidays, or regular days of rest, unless overtime is worked on such days.”<sup>1</sup>

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### **Impact of Proposed Legislation:**

**State adult correctional facilities.** By increasing the requirements for overtime pay, more employers may reach the threshold for failing to pay wages valued at a total of \$10,000 or more. If an employer is inclined to defraud an employee of wages, the threshold of \$10,000 for a Class 6 felony conviction is easier to obtain because total wages due employees are likely to increase under the proposal. In this way, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Data are not available to estimate the number of additional felony convictions that would result from enactment of the proposal. Therefore, the impact on prison bed space needs cannot be determined.

**Local adult correctional facilities.** Similarly, the proposal may increase local-responsible (jail) bed space needs. Because the number of new convictions that may result from enactment of the proposal cannot be determined, the magnitude of the impact on jail bed space needs cannot be estimated.

**Adult community corrections programs.** Because the proposal could result in more felony convictions and subsequent supervision requirements for additional offenders, the proposal may increase the need for adult community corrections resources. However, the potential impact on state and local community corrections programs cannot be determined.

**Virginia’s sentencing guidelines.** Felony convictions under § 40.1-29 are not covered by the sentencing guidelines when the offense is the primary, or most serious, offense in a case. However, convictions under this statute 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 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.

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**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 836 of the 2017 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.**

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<sup>1</sup> U.S. Department of Labor, [https://www.dol.gov/whd/overtime\\_pay.htm](https://www.dol.gov/whd/overtime_pay.htm)

**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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