



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 920 (Patron – Lopez)

LD#: 18104521

Date: 1/9/2018

Topic: Sale of items containing animal parts

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **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

Summary of Proposed Legislation:

The proposal amends §§ 29.1-563, 29.1-564, and 29.1-567 of the *Code of Virginia*, relating to the taking, transportation, sale, etc., of endangered species or items containing parts of certain animals. Currently under § 29.1-564, the taking, transportation, possession, sale, or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the U.S. Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973, or any modifications or amendments thereto, is prohibited (except as provided in § 29.1-568). Pursuant to § 29.1-567, any person who violates any provision of § 29.1-564 or § 29.1-566, or any regulation issued pursuant to these sections, or violates any regulation or permit issued under § 29.1-568 is guilty of a Class 1 misdemeanor. However, the sale, offering for sale, purchasing, or offering to purchase within the Commonwealth of any fish or wildlife appearing on a list of threatened or endangered species as prohibited by subsection A of § 29.1-564 is punishable as provided in § 29.1-553.

Under § 29.1-553, any person who offers for sale, sells, offers to purchase, or purchases any wild bird or wild animal, or any part thereof, or any freshwater fish, except as provided by law, is guilty of a Class 1 misdemeanor. However, when the aggregate of such sales or purchases or any combination thereof, by any person totals \$200 or more during any 90-day period, that person is guilty of a Class 6 felony.

The proposal adds subsection B to § 29.1-564 to include items containing parts or by-products from animals that are extinct or appear on any list of threatened or endangered species published by the U.S. Secretary of the Interior. Under the proposed § 29.1-564(B), purchasing, selling, offering for sale, or

possessing with intent to sell any item that a person knows or should know contains or is made of, wholly or partially, an animal part or by-product that is derived from any species of elephant, rhinoceros, whale, tiger, lion, leopard, cheetah, jaguar, pangolin, sea turtle, shark, ray, mammoth, narwhal, walrus, or hippopotamus that is extinct or endangered is prohibited and punishable as a Class 1 misdemeanor, pursuant to § 29.1-567. In addition to criminal penalties, the proposal would establish civil penalties for violating § 29.1-564(B) such that, upon conviction, the offender would pay a civil penalty not to exceed \$6,500 or an amount equal to four times the market value of the item that is the subject of the violation, whichever is greater.

Analysis:

According to Circuit Court Case Management System (CMS) data for fiscal year (FY) 2016 and 2017, there were two offenders convicted of a Class 6 felony offense under § 29.1-553. It was the primary, or most serious, offense in one of the cases. The offender did not receive an active term of incarceration to serve after sentencing. Furthermore, General District Court CMS data for the same time period indicate that four offenders were convicted of a misdemeanor offense under § 29.1-553. It was the primary offense in all of the cases. None of the offenders received an active term of incarceration to serve after sentencing.

Additionally, according to General District CMS data for fiscal year (FY) 2012 through 2017, there were no convictions under § 29.1-567 for unlawfully taking a threatened or endangered species.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal expands the circumstances under which an individual may be convicted of a misdemeanor for a violation of § 29.1-564. Because the proposal does not create a new felony or expand an existing felony, it is not expected to affect state-responsible (prison) bed space needs.

Local adult correctional facilities. The proposal may increase local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in misdemeanor convictions and subsequent supervision requirements for additional offenders, the proposal may increase the need for local community corrections resources. However, the impact on these community corrections programs cannot be calculated.

Virginia's sentencing guidelines. Misdemeanor convictions are not covered by the sentencing guidelines when the misdemeanor is the primary, or most serious, offense at sentencing. However, misdemeanor convictions 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. According to the Department of Juvenile Justice, the impact of the proposal 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 is \$0 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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