



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 873 (Patron – Bourne)

LD#: 20101904

Date: 12/27/2019

Topic: Discovery in criminal cases

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:**
None (\$0) **
- **Juvenile Detention Facilities:**
None (\$0) **

** 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 854 of the 2019 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposed legislation adds §§ 19.2-264.6 through 19.2-264.15 to the *Code of Virginia*, to establish requirements and procedures for discovery by an accused and by the Commonwealth in criminal cases. As proposed, prior to filing any motion before a judge, the party requesting discovery must request that the other party voluntarily comply with the discovery request. If the response to the discovery request is negative or unsatisfactory, or there is no response within seven days, the party requesting discovery may file a motion for discovery with the court. The proposal defines information that is subject to discovery and provides a mechanism for redaction of certain personal identifying information. The proposal also creates a procedure for depositions of witnesses prior to trial and the use of statements obtained during such depositions for impeachment at trial. As proposed, either party may request the court to enter a protection order about discovery and, if granted, the court may order any condition limiting, but not preventing, disclosure.

Finally, the proposal makes it a Class 6 felony for any person to willfully omit or misrepresent evidence or information required to be disclosed to the accused. It would be a Class 1 misdemeanor for any person to willfully omit or misrepresent any other evidence of information required to be disclosed. In addition to possible criminal charges, the court, as proposed, could impose additional remedies it deems just if a party fails to comply with any of the requirements of the statute.

Analysis:

The most similar offense in the existing *Code* to the proposed is contempt of court for misbehavior of an officer of the court under § 18.2-456(4). According to General District Court Case Management System (CMS) data for fiscal year (FY) 2018 through FY2019, there were no convictions under § 18.2-456(4) for misbehavior of an officer of the court.

Impact of Proposed Legislation:

State adult correctional facilities. By adding criminal penalties for misrepresenting or omitting evidence or information during the discovery process, the proposal may result in felony convictions. Should additional felony convictions result, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, the databases available to the Commission do not contain sufficient detail to estimate the number of additional convictions that may result from the proposal.

Local adult correctional facilities. Similarly, the proposal could affect the local-responsible (jail) bed space needs of the Commonwealth. The magnitude of the impact cannot be determined.

Adult community corrections programs. To the extent that the proposal could result in additional convictions with supervision requirements for the offenders, the proposal may affect adult community corrections resources. The potential impact on community corrections cannot be quantified.

Virginia’s sentencing guidelines. Convictions under the proposed § 19.2-264.6 would not be covered by the sentencing guidelines when the offense is the primary, or most serious, offense in a case. However, such convictions 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 proposal is not expected to increase direct care (juvenile correctional center or alternative commitment placement) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal will not increase the bed space needs of juvenile detention facilities.

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 854 of the 2019 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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.