

Department of Planning and Budget 2022 Fiscal Impact Statement

1. Bill Number: HB496ER

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: Mullin

3. Committee: Passed both houses

4. Title: Abuse and neglect; financial exploitation; incapacitated adults; penalties.

5. Summary: The proposed legislation changes the term "incapacitated adult" to "vulnerable adult" for the purposes of the crime of abuse and neglect of such adults and defines "vulnerable adult" as any person 18 years of age or older who is impaired by reason of mental illness, intellectual or developmental disability, physical illness or disability, or other causes, including age, to the extent the adult lacks sufficient understanding or capacity to make, communicate, or carry out reasonable decisions concerning his/her well-being or has one or more limitations that substantially impair the adult's ability to independently provide for his/her daily needs or safeguard his/her person, property or legal interests. The proposal also provides exemptions from civil penalties for guardians or legal representatives of vulnerable adults who obtain or possess substances such as marijuana or cannabis oil for the medical benefit of the vulnerable adult. This bill is a recommendation of the Virginia Criminal Justice Conference. Section 18.2-178.1, related to penalties for the financial exploitation of mentally incapacitated persons, is amended to conform to the changes in definition established in § 18.2-369 (abuse and neglect of incapacitated adults). Additionally, changes to §§ 18.2-60.5 (unauthorized use of electronic tracking device), 46.2-341.20:7 (possession of marijuana in commercial motor vehicle), 54.1-3408.3 (certification for use of cannabis oil for treatment), 54.1-3442.5 (various definitions), 54.1-3442.6 (permit to operate pharmaceutical processor or cannabis dispensing facility), and 54.1-3442.7 (dispensing cannabis products) incorporate the changes in definition established in § 18.2-369.

6. Budget Amendment Necessary: Yes, Item 404.

7. Fiscal Impact Estimates: Final (see Item 8 below).

8. Fiscal Implications: The proposal amends § 18.2-178.1 and § 18.2-369 to modify the definition of incapacitated adult for the purposes of defining the crimes of financial exploitation and abuse and neglect of such persons. According to analysis by the Virginia Criminal Sentencing Commission, by potentially expanding the applicability of existing felonies under § 18.2-178.1 and § 18.2-369, the proposed legislation 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.

Currently, "incapacitated adult" is defined as "an adult who is impaired by reason of mental illness, intellectual disability, physical illness or disability, advanced age or other causes to the extent he/she lacks sufficient understanding or capacity to make, communicate or carry out reasonable decisions concerning his/her well-being". The proposal changes the term "incapacitated adult" to "vulnerable adult" and specifies that advanced age means 65 years of age or older. The proposal also adds to the definition of "vulnerable adult" any person who has one or limitations that substantially impair his/her ability to independently provide for daily needs or safeguard his/her person, property or legal interests.

Currently, under § 18.2-178.1, financial exploitation of a person with a mental incapacity is punishable as larceny. Larceny is a Class 1 misdemeanor if the value of stolen money or property is less than \$1,000 or, if the value is \$1,000 or more, a felony punishable by imprisonment of 1 to 20 years. The proposal expands this provision to cover all those included in the new definition of "vulnerable adult."

Also, under § 18.2-369, any responsible person who abuses or neglects an incapacitated adult is guilty of a Class 1 misdemeanor if the abuse or neglect does not result in serious bodily injury or disease; any person 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 bill replaces the term "incapacitated adult" in this section with "vulnerable adult." The bill also provides exemptions from civil penalties for guardians or legal representatives of vulnerable adults who obtain or possess substances such as marijuana or cannabis oil for the medical benefit of the vulnerable adult.

According to data collected and reviewed by the Virginia Criminal Sentencing Commission, the Circuit Court Case Management System (CMS) for fiscal year (FY) 2020 and FY2021, 14 offenders were convicted of a felony under § 18.2-178.1 for financial exploitation of a mentally incapacitated person. During FY2020, the felony threshold for larceny was \$500; for FY2021, the General Assembly increased the threshold to \$1,000. The financial exploitation conviction was the primary, or most serious, offense in 12 of these cases; in at least five cases, the actual value of the crime exceeded the current \$1,000 felony threshold. Two offenders (16.7%) were given state-responsible (prison) terms of, respectively, one and four years. One offender (8.3%) received a local-responsible (jail) sentence of 3.5 months. The remaining nine offenders (75.0%) did not receive an active term of incarceration to serve after sentencing. During the same two-year period, General District Court CMS data indicate that there were two misdemeanor convictions under § 18.2-178.1 for financial exploitation of mentally incapacitated persons. Neither of these two offenders received an active term of incarceration to serve after sentencing.

The Virginia Criminal Sentencing Commission also states that 20 offenders were convicted of a felony violation of § 18.2-369 for abuse or neglect of an incapacitated adult during this two-year period. This offense was the primary offense in 18 cases. Thirteen offenders were convicted of abuse or neglect of an incapacitated adult resulting in serious bodily injury or

disease. Of these, eight offenders (61.5%) were sentenced to serve state-responsible (prison) terms with a median sentence of just over one year. Three offenders (23.1%) were given local- responsible (jail) terms with a median sentence of six months. The remaining two offenders (15.4%) did not receive an active term of incarceration to serve after sentencing. In addition, five offenders were convicted of abuse or neglect of an incapacitated adult resulting in death. Of these, three offenders (60%) were given prison terms with a median sentence of 1.5 years. The remaining two offenders (40%) did not receive an active term of incarceration to serve after sentencing. No offender received a local-responsible (jail) term for this offense. There were no felony convictions for a second or subsequent offense under this section. General District Court CMS data for FY2020 and FY2021 indicate that seven offenders were convicted of misdemeanor abuse or neglect of an incapacitated adult under § 18.2-369. For the three offenders (42.9%) sentenced to serve jail terms, the median sentence was just under nine months.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 552, 2021 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

The proposed legislation may also increase the local-responsible jail bed space needs. However, there is not enough information available to reliably estimate the increase in jail population as a result of this proposal. Nevertheless, any increase in jail population would increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanant or otherwise local-responsible prisoner held in a jail and \$12.00 a day for each state-responsible prisoner. It also funds a considerable portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2021), the estimated total state support for local jails averaged \$37.58 per inmate, per day in FY 2020.

The legislation is not expected to have a fiscal impact on the agencies within the Secretariat of Health and Human Resources.

9. Specific Agency or Political Subdivisions Affected: the Department of Corrections, local law-enforcement agencies, Office of Public Defender, Courts, local jails, Commonwealth's Attorneys.

10. Technical Amendment Necessary: None.

11. Other Comments: This bill is similar to SB687H1.