



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1143 (Patron – McPike)

LD#: 23101212

Date: 01/09/2023

Topic: Charitable gaming etc.

- **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 2 of the Acts of Assembly of 2022, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

Summary of Proposed Legislation:

The proposal amends numerous sections of the *Code* and adds Chapter 40 of Title 58.1 (§§ 58.1-4048 through 58.1-4087), relating to regulation of charitable gaming and historical horse racing.

Under the proposed Article 3 of charitable gaming (§§ 58.1-4048 through 58.1-4076), the Virginia Lottery (renamed as Virginia Lottery and Gaming Department) is vested with control of all charitable gaming in the Commonwealth, and Virginia Lottery Board (renamed as the Virginia Lottery and Gaming Oversight Board) would have the power to prescribe regulations and conditions for conducting charitable gaming. Similarly, under the proposed Article 4 of historical horse racing (§§ 58.1-4077 through 58.1-4087), the bill directs Virginia Lottery and Gaming Department to have a regulatory control of all historical horse racing with pari-mutuel wagering in the Commonwealth. The proposal also provides that Virginia Lottery and Gaming Oversight Board would adopt regulations regarding the licensure of historical horse racing operators, suppliers of historical horse racing wagering terminals, and other necessary persons that incorporate established best practices.

In general, this proposal moves and readopts currently existing criminal penalties related to charitable gaming and historical horse racing into new statutes. The proposed § 58.1-4067 mirrors existing § 18.2-340.30 in that each qualified social organization would be subject to the penalty of perjury if providing a false information on reports of gross receipts related to charitable gaming. According to the proposed § 58.1-4075 (C), any person who converts funds derived from any charitable gaming to his own or another's use, when the amount of funds is less than \$1,000, shall be guilty of petit larceny, punishable as a Class 1 misdemeanor. If the amount of funds is \$1,000 or more, an offender shall be guilty of felony

grand larceny, punishable by imprisonment of 1 to 20 years. This statute mirrors the currently existing § 18.2-340.37(C). Under the proposed §§ 58.1-4085 and 58.1-4086, any person who conducts pari-mutuel wagering for historical horse racing without license or fraudulently uses, forges, or simulates the license for historical horse racing would be guilty of a Class 4 felony. These statutes are re-adopted from the currently existing §§ 59.1-395 and 59.1-396 relating to horse racing and pari-mutuel wagering (these statutes currently cover the violations related to historical horse racing).

The proposal also provides the new definition of historical horse racing. Under the proposed § 58.1-4078, historical horse racing means a form of horse racing that creates pari-mutuel pools from wagers placed on previously conducted horse races and is hosted at a satellite facility that is owned or operated by a significant infrastructure limited license. The new definition of historical horse racing would limit the type of operator and venue for the lawful operation of historical horse racing. Currently, under § 59.1-365, the definition of historical horse racing also includes a racetrack as a host location and allows the nonprofit industry stakeholder organization to own and operate a satellite facility for historical horse racing.

Lastly, as this proposal re-establishes all new rules and regulations for charitable gaming in new Article, the bill would repeal currently existing Article 1.1:1 relating to charitable gaming.

Analysis:

According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2017 through FY2022, no offender was convicted of a felony grand larceny under § 18.2-340.37(C) for illegally converting funds (\$1,000 or more) from charitable gambling. By the same token, no offender was convicted of perjury under § 18.2-340.30 for making a false information on the report of gross receipts for charitable gaming.

Similarly, according to the same data, there were no convictions for any Class 4 felony offenses specified under §§ 59.1-377, 59.1-395, and 59.1-396 (the existing statutes related to horse racing and pari-mutuel wagering) for making a false statement to obtain license, unlawfully conducting pari-mutuel horse racing, or fraudulently using or forging credential during the six-year time period.

The proposal would expand the potential pool of the individuals who could be subject to the criminal penalties specified under the proposed §§ 54.1-4084 through 58.1-4087 because it would only allow certain owners/operators of satellite facilities with a significant infrastructure limited license to legally operate historical horse racing. However, existing data are not sufficiently detailed to estimate the number of additional convictions.

Impact of Proposed Legislation:

State adult correctional facilities. Although no offender has been convicted of any crimes that are equivalent to the proposed felony offenses specified in this proposal during the six most recent fiscal years, the proposal expands the potential pool of the individuals who could be subject to the criminal penalties (especially felony offense under the proposed §§ 58.1-4085 or 58.1-4086) by limiting the type of the owners or operators who can legally run historical horse racing. Therefore, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal. Therefore, the magnitude of the impact on prison beds cannot be quantified.

Local adult correctional facilities. Similarly, the proposal may also increase the local-responsible (jail) bed space needs of the Commonwealth. 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 determined, the potential impact on community corrections resources cannot be quantified.

Virginia’s Sentencing Guidelines. Since the proposal creates several new felony offenses, convictions under the proposed sections of the *Code* would not be covered by the Sentencing Guidelines as the primary, or most serious, offense. However, they may augment the Sentence recommendation if the most serious offense is covered by the Guidelines. No adjustment to the Guidelines is 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 2 of the Acts of Assembly of 2022, Special Session I, 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.

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