



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 857

(Patron – Cosgrove)

LD #: 23103480

Date: 12/22/2022

Topic: Theft of trade secrets

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:**
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 the *Code of Virginia* by adding § 18.2-213.3 related to the theft of or trafficking in trade secrets. The proposal would add criminal penalties in addition to any current civil or criminal penalties related to the Uniform Trade Secrets Act, §§ 59.1-336 — 59.1-343.

Under the proposal any person who willfully and without authorization obtains or uses, or endeavors to obtain or use, a trade secret with the intent to either temporarily or permanently (i) deprive or withhold from the owner thereof the control or benefit of a trade secret or (ii) appropriate a trade secret for their own use or for the use of another person not entitled to the trade secret is guilty of a Class 6 felony. The proposal also provides that any person who willfully traffics in, or attempts to traffic in, a trade secret that is known or should have been known was obtained or used without authorization is guilty of a Class 5 felony. The punishments for such violations increase to the Class 5 felony and Class 4 felony when such offenses are committed with the intent to benefit a foreign government, a foreign agent, or a foreign instrumentality.

Analysis:

There are no substantially similar statutes to the proposal, but there are several statutes related to computer fraud, theft or trespass under §§ 18.2-152.1 — 18.2-152.16. According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2017 through FY2022, there were 10 Class 6 felony computer convictions under these statutes. The computer crime was the primary, or most serious, offense

in four cases. One received a local-responsible (jail) term of 12 months, while the others did not receive a term of incarceration to serve after sentencing. There were 38 Class 5 felonies for the selected computer crimes. In 14 cases, the computer crime was the most serious offense. While the majority did not receive an active term of incarceration to serve after sentencing, four received a jail term with a median sentence of 6.0 months and one received a state-responsible (prison) term of 1.3 years. There was one Class 4 felony conviction, but it was not the most serious offense in the sentencing event. In this case, perjury was the most serious offense, and the defendant did receive an effective prison sentence of three years. However, all time was suspended for the Class 4 felony computer crime.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal establishes several felony offenses for which imprisonment is authorized. In this way, the proposal could 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 that may 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 impact the local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

Adult community corrections resources. The impact, if any, on state community corrections resources and local community-based probation services cannot be estimated.

Virginia's Sentencing Guidelines. As new felonies, convictions under the proposed § 18.2-213.3 would not be covered by the Sentencing Guidelines as the primary, or most serious, offense. However, such convictions may augment the Guidelines recommendation (as additional offenses) if the most serious offense at sentencing is covered by the Guidelines. No immediate adjustment to the Guidelines would be necessary under the proposal. If the proposal is enacted, the Sentencing Commission in the future could conduct detailed analyses of sentencing patterns to determine the feasibility of adding the new felonies to the Guidelines system.

Juvenile correctional centers. 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.