



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 40

(Patron – Simon)

LD #: 24100671

Date: 12/21/2023

Topic: Prohibited use of campaign funds (perjury)

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined, likely to be small
- **Adult Community Corrections Programs:**
Cannot be determined, likely to be small

- **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 1 of the Acts of Assembly of 2023, 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 and reenacts §§ 2.2-3711, 24.2-946, and 24.2-948.4 of the *Code of Virginia* and adds Article 3 of Chapter 9.3 of Title 24.2 sections numbered 24.2-948.6, 24.2-948.7, and 24.2-948.8, relating to campaign finance. As proposed, no person may convert contributions to a candidate or a campaign committee for personal use. Current law only prohibits such conversion of contributions with regard to disbursement of surplus funds at the dissolution of a campaign or political committee. The proposal provides that a contribution is considered to have been converted to personal use if the contribution, in whole or in part, is used to fulfill any commitment, obligation, or expense that would exist irrespective of the person's seeking, holding, or maintaining public office. However, the proposal allows a contribution to be used for the ordinary and accepted expenses related to campaigning for or holding elective office, including the use of campaign funds to pay for the candidate's childcare expenses that are incurred as a direct result of campaign activity. The bill directs the State Board of Elections to adopt emergency regulations similar to those promulgated by the Federal Election Commission to implement the provisions of the proposal.¹

Under the proposed § 24.2-948.7 anyone who contributed to a campaign or candidate or who is qualified to vote in that specific election may file a complaint under the penalty of perjury. Perjury is a Class 5 felony.¹

Analysis:

¹ Under current law, the felony offenses related to campaign finance are eligible for the enhanced sentence credits specified in § 53.1-202.3, whereby individuals must serve a minimum of 67% of the sentence ordered by the court.

Existing data sources do not contain sufficient information to estimate the number of additional felony convictions that may result if the proposal is enacted. Individuals convicted of the proposed perjury offense may be sentenced similarly to those currently convicted of a Class 5 felony for perjury under §§ 18.2-434 or 24.2-1016.

According to Sentencing Guidelines data for fiscal year (FY) 2018 through FY2023, 220 individuals were convicted under § 18.2-434 for falsely swearing on an oath. In 145 of the cases, this offense was the primary, or most serious, offense in the sentencing event. Of these 145 sentencing events, 43.4% of defendants received probation without an active term of incarceration, 46.2% received a local-responsible (jail) term, and 10.3% received a state-responsible (prison) term. For defendants given a state prison term, the median sentence was 1.5 years.

According to Circuit Court Case Management System (CMS) data for FY2018 through FY2023, there were seven convictions when the primary, or most serious, offense in the sentencing event was perjury under § 24.2-1016. Perjury under this *Code* sections is related to elections and campaigns. All received probation without an active term of incarceration. Other defendants may have been convicted of perjury under § 18.2-434 for the same acts.

Impact of Proposed Legislation:

State adult correctional facilities. By creating a new Class 5 felony offense and/or increasing the application of current felonies, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Available information is insufficient to estimate the number of new felony convictions that may result from enactment of the proposal. Although the magnitude of the impact on prison beds cannot be quantified, the impact, if any, is likely to be small.

Local adult correctional facilities. Similarly, the proposal may increase local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined. The impact, if any, is likely to be small.

Adult community corrections programs. Because the proposal could result in additional convictions with supervision requirements for the offenders, the proposal may affect adult community corrections resources. While the potential impact on community corrections resources cannot be quantified, any impact is likely to be small.

Virginia's Sentencing Guidelines. As a new felony, a conviction under the proposed § 24.2-948.7 would not be covered by the Sentencing Guidelines when the offense is the primary, or most serious, offense in a case. Such a conviction could augment the Guidelines recommendation (as an additional offense) if the most serious offense at sentencing is covered by the Guidelines. If convicted for perjury under § 18.2-434, the convictions are currently covered by Sentencing Guidelines. No immediate adjustment to the Guidelines is necessary under the proposal. If the proposal is enacted, the Sentencing Commission in the future would conduct detailed analyses of sentencing patterns under the new provision to determine the feasibility of adding the new felony to the Guidelines system. The proposed felony would not be defined as violent under § 17.1-805(C) for Guidelines purposes.

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 1 of the Acts of Assembly of 2023, 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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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