



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 757

(Patron – Lewis)

LD #: 22104331

Date: 01/18/2022

Topic: Wire, mail, bank and health care fraud

Fiscal Impact Summary:

- **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 552 of the Acts of Assembly of 2021, 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 adds §§ 18.2-203.1 and 18.2-203.2 to the *Code of Virginia*. The new sections create offenses for crimes related to wire fraud, mail fraud, bank fraud, and health care fraud. The penalty for each of these proposed felonies is imprisonment of 1 to 20 years.

Currently, most wire fraud and mail fraud cases are prosecuted by the federal government. Penalties for welfare fraud in Virginia are defined by § 63.2-500 – § 63.2-527. However, there are no statutes that are specifically related to bank fraud or health care fraud as defined by the proposal.

Analysis:

Existing data sources do not contain sufficient detail to identify the number of additional individuals who, if the proposal were enacted, would be convicted of the felonies under the proposed §§ 18.2-203.1 and 18.2-203.2. However, affected offenders may be sentenced similarly to those sentenced under existing fraud provisions with a maximum penalty of 20 years.

According to the Sentencing Guidelines database for fiscal year (FY) 2020 to FY2021, 1,406 offenders were convicted of a felony fraud offense with a statutory maximum of 20 years under §§ 18.2-192(1,a),

18.2-192(1,b), 18.2-178, 18.2-186(B), 18.2-200.1, 43-13, 63.2-522 or 63.2-523. The fraud offenses were the primary, or most serious, offense in 1,225 of the cases. Over one third (38.4%) of these offenders did not receive an active term of incarceration to serve after sentencing. Another third of these offenders (33.1%) received a local-responsible (jail) term with a median sentence of 7.0 months. The remaining 350 offenders (28.6%) were given a state-responsible (prison) term for which the median sentence was 1.0 year.

The number of convictions in the federal system for fraud, theft or embezzlement offenses may better illustrate the number of offenders who may be convicted under the proposal. According to the U.S. Sentencing Commission's 2020 Sourcebook¹ there were 116 convictions in the Eastern District of Virginia and 26 in the Western District for larceny and fraud offenses. The available source did not identify the number of wire, mail, bank and health care fraud cases within the category.

Impact of Proposed Legislation:

State adult correctional facilities. By creating new felony offenses, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, data do not contain sufficient detail to estimate the number of individuals likely to be affected by the proposal. Therefore, the magnitude of the impact cannot be determined.

Local adult correctional facilities. Similarly, the impact of the proposal on local-responsible (jail) bed space needs cannot be determined.

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

Virginia's sentencing guidelines. As new felony offenses, the Sentencing Guidelines would not cover convictions under the proposed *Code* sections as the primary (most serious) offense in a sentencing event. However, such convictions may augment the Guidelines recommendation (as additional offenses) if the most serious offense at sentencing is covered by the Guidelines. No adjustment to the Guidelines would be necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice (DJJ), 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 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 552 of the Acts of Assembly of 2021, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

¹ <https://www.ussc.gov/research/sourcebook-2020>