



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill 2535

(Patron - Hope)

LD #: 25103850

Date: 01/08/2024

Topic: Uniform Health Care Decision Act

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:**
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 2 of the Acts of Assembly of 2024, 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 establishes the Uniform Health Care Decisions Act and repeals several sections relating to the current Health Care Decisions Act. Specifically, the proposal creates a process for the execution of advance health care directives, establishes criteria for determining the capacity of an individual to make health care decisions, provides for the establishment of a default surrogate in the absence of an appointed agent for health care decisions, establishes powers and duties of agents appointed by powers of attorney for health care, and establishes duties of health care professionals.

Under the proposed § 54.1-2993.13(C), a responsible health care professional may require an individual who assumes authority to act as a default surrogate to provide a declaration in record under the penalty of perjury stating facts and circumstances reasonably sufficient to establish the authority. Moreover, under the proposed § 54.1-2993.26(B), an individual may create a certified physical copy of an advance health care directive or revocation of an advance health care directive by affirming, under the penalty of perjury, that the physical copy is a complete and accurate copy of the directive or revocation. Currently, under § 18.2-434, a person to whom an oath is lawfully administered who willfully and falsely swears to any material matter may be prosecuted for perjury, a Class 5 felony.¹

¹ Perjury under § 18.2-434 is eligible for the enhanced sentence credits specified in § 53.1-202.3. Individuals convicted of this offense serve a minimum of 67% of the sentence ordered by the court.

Analysis:

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.

According to Sentencing Guidelines data for fiscal year (FY) 2023 through FY2024, 58 individuals were convicted under § 18.2-434 for falsely swearing on an oath. In 36 of the cases, this offense was the primary, or most serious, offense in the sentencing event. Of these 36 sentencing events, 47.2% of defendants received probation without an active term of incarceration, 41.7% received a local-responsible (jail) term, and 11.1% received a state-responsible (prison) term. For defendants given a state prison term, the median sentence was 1.2 years.

According to Circuit Court Case Management System (CMS) data for FY2019 through FY2024, nine individuals were convicted of perjury by falsely subscribing a written declaration, etc., under § 18.2-434 as the primary, or most serious, offense. Of these nine sentencing events, 44.4% of defendants received probation without an active term of incarceration, 33.3% received a local-responsible (jail) term with a median sentence of approximately 10 days, and the remaining 22.3% received a state-responsible (prison) term with the median sentence of 1.8 years.

Impact of Proposed Legislation:

State adult correctional facilities. While it repeals several existing felony offenses, the proposal expands the applicability of an existing Class 5 felony perjury offense. The net effect on the number of convicted individuals and sentencing patterns cannot be estimated; therefore, the net impact of the proposal on state-responsible (prison) bed space needs cannot be determined.

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

Adult community corrections programs. Because the proposal could result in additional felony convictions with supervision requirements for the offenders, the proposal may affect adult community corrections resources. The potential impact on community corrections resources cannot be quantified.

Virginia's Sentencing Guidelines. A conviction for perjury (with falsely swearing an oath) under § 18.2-434 is covered by Sentencing Guidelines. A conviction under § 18.2-434 for falsely subscribing a written declaration is not covered by the Sentencing Guidelines when it is the primary, or most serious, offense in a case. Such a conviction, however, could augment the Guidelines recommendation (as an additional offense) if the most serious offense at sentencing is covered by the Guidelines. The proposed felony would not be defined as violent under § 17.1-805(C) for Guidelines purposes. No adjustment to the Guidelines is necessary under the proposal.

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 2 of the Acts of Assembly of 2024, 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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