



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill 238 Amendment in the Nature of a Substitute (Patron Prior to Substitute – Lopez)

LD#: 26105944

Date: 02/06/2026

Topic: Payment of Wages

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:**
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 725 of the Acts of Assembly of 2025, 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 § 40.1-29 to expand the definition of wages. Under the proposed changes to § 40.1-29, wages includes any remuneration an employer owes to an employee, including hourly wages, day rates, salaries, overtime wages, commissions, tips, bonuses, severance, accrued vacation or sick leave pay pursuant to an employment policy or agreement, and damages available due to the misclassification of an employee in violation of § 40.1-28.7:7.

Currently under § 40.1-29 (E), an employer who willfully and with intent to defraud fails or refuses to pay wages in accordance with this section or § 40.1-29.3 (overtime for certain employees) would be guilty of a Class 1 misdemeanor if the total value of the wages not paid by the employer is less than \$10,000. The penalty would increase to a Class 6 felony if the total value of the wages not paid is \$10,000 or more or it is the second or subsequent conviction for a violation under §§ 40.1-29 (failure to pay wages) or 40.1-29.3 (failure to pay overtime wages).¹

¹ For the first conviction, these felonies are eligible for the enhanced sentence credits specified in § 53.1-202.3, whereby offenders serve a minimum of 67% of the sentence ordered by the court; however, an individual convicted of one of these felonies who has a prior conviction for the same offense or any other offense listed in § 53.1-202.3(A17) is not eligible for the enhanced sentence credits and must serve a minimum of 85% of the sentence ordered by the court.

In essence, the proposal would expand the types of compensation that may be used to determine whether the \$10,000 threshold is met for triggering a felony violation under the same section.

Analysis:

Existing databases do not provide sufficient detail to estimate the number of new convictions likely to result from enactment of the proposal. If convicted, however, such individuals may be sentenced similarly to defendants currently convicted under §40.1-29 for violations associated with failure to pay wages or failure to pay overtime wages.

According to Circuit Court Case Management System (CMS) data for Fiscal Year (FY) 2020 through FY2025, one offender was convicted of a Class 6 felony under § 40.1-29 for failure to pay wages. For this individual, it was the most serious offense at sentencing. The offender received a state-responsible (prison) sentence of 3.5 years.

General District Court CMS data for the same six-year period did not reveal any misdemeanor convictions under § 40.1-29 for failing to pay wages or overtime wages.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the definition of wages, the proposal may increase the number of violations involving amounts of \$10,000 or more that are subject to existing Class 6 felony penalties for wage violations under § 40.1-29. As a result, the proposal could increase state-responsible (prison) bed space needs for the Commonwealth. However, because the number of additional felony convictions that may result cannot be estimated with available data, the magnitude of the potential impact on prison bed space cannot be determined.

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

Adult community corrections programs. Because the proposal could result in 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 estimated.

Virginia’s Sentencing Guidelines. The Sentencing Guidelines do not cover violations of § 40.1-29 as the primary, or most serious, offense. 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. Felonies under § 40.1-29 are not defined as violent by § 17.1-805(C) for Guidelines purposes. No adjustment to the Guidelines would be 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 725 of the Acts of Assembly of 2025, 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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