



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 363

(Patron – Reid)

LD #: 24100363

Date: 12/15/2023

Topic: Disqualifications from office in the Commonwealth

Fiscal Impact Summary:

<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • Juvenile Correctional Centers: None (\$0) ** • Juvenile Detention Facilities: None (\$0) ** <p>** Provided by the Department of Juvenile Justice</p>
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* 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 specifies that any person found to have engaged in insurrection or rebellion against the United States, or to have given aid or comfort to the enemies thereof, shall be disqualified from holding any office of the Commonwealth or of its governmental units in accordance with Section 3 of the Fourteenth Amendment to the Constitution of the United States. Persons holding office who are so disqualified may be removed by a writ of quo warranto, except that a member of the General Assembly may be removed by the house in which he sits. The bill requires any candidate for any elective office in the Commonwealth to submit an affidavit of eligibility attesting that he/she has not engaged in any insurrection or rebellion against the United States, or given aid or comfort to its enemies, and is therefore eligible to hold elective office under Section 3 of the Fourteenth Amendment. Under the proposed § 24.2-501.1, such affidavit shall be made under penalty of perjury, punishable as a Class 5 felony, subject to a term of imprisonment of not less than five years and a fine of \$25,000.¹ As proposed, the term of imprisonment may be suspended by the court in whole or in part. The name of any person who does not submit a signed and notarized affidavit of eligibility shall not be printed on the ballot for the nomination or office sought.

Analysis:

¹ The proposed felonies would be eligible for the enhanced sentence credits specified in § 53.1-202.3, whereby offenders will 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. 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.

Impact of Proposed Legislation:

State adult correctional facilities. By creating a new Class 5 felony offense, 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 § 24.2-501.1 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. 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 the 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.