



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 212
Amendment in the Nature of a Substitute
Proposed by the House Committee on General Laws
(Patron Prior to Substitute – Rouse)

LD#: 24107929

Date: 02/20/2024

Topic: Electronic gaming devices

Fiscal Impact Summary:

<ul style="list-style-type: none"> • State Adult Correctional Facilities: \$50,000 * • Local Adult Correctional Facilities: Cannot be determined • Adult Community Corrections Programs: Cannot be determined 	<ul style="list-style-type: none"> • Juvenile Direct Care: Cannot be determined ** • Juvenile Detention Facilities: Cannot be determined ** <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 adds several sections to the *Code of Virginia* relating to the regulation of electronic gaming devices. The proposed § 58.1-4200 defines “electronic gaming device” as follows:

“[A] physical terminal, machine, or other device, including electronic or computerized devices, that requires the insertion of a coin, currency, ticket, token, or similar object to operate, activate, or play a game, the outcome of which may be determined by the skill of the player, and that may deliver or entitle the person playing or operating the device to receive cash in excess of the cost of operating, activating, or playing the game.”

The proposal sets forth administrative procedures, licensing frameworks, and operation requirements for electronic gaming devices, and establishes new offenses relating to electronic gaming in Virginia. It would designate the Virginia Lottery Board (Board) to regulate the devices. Respective licenses issued by the Board would be required to manufacture, distribute, or run an establishment that hosts electronic gaming devices in The Commonwealth.

The proposal defines several offenses that would be punishable as Class 1 misdemeanors including: any person under the age of 21 who plays an electronic gaming device or anyone redeems evidence of device winnings from a person under the age of 21; any person who makes a false statement in any electronic

gaming license application; and any host that gives a reward for an unauthorized electronic gaming device, gives a reward that is redeemable off the host location's premises, accept any inducement from an operator licensee, or permits a person under the age of 21 to play an electronic gaming device.

The proposal also defines several offenses that would be punishable as Class 6 felonies including: manufacturing, distributing, operating, or hosting an electronic gaming device without a license; soliciting, offering, or entering into any contract or agreement for the placement of an electronic gaming device before the distributor, host location, and procurement agent, if applicable, are all issued a license; anyone but an distributor licensee possessing or using a key or device for the operation of gaming device, or any person tampering with a device; and conspiring, confederating, or combining with another to commit any felony prohibited under the proposed Chapter 42 of Title 58.1.¹

The bill has the delayed effective date of July 1, 2025 for the first (the proposed Chapter 42 of Title 58.1) and fifth enactment clauses of the bill.

Currently, under § 18.2-328, operating an illegal gambling enterprise is a Class 6 felony. An operator who engages in an illegal gambling operation that is in continuous operation for more than 30 days or who has a gross revenue of \$2,000 or more in a single day is subject to imprisonment for one to ten years.

Analysis:

According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2018 and FY2023, two offenders were convicted of a felony under § 18.2-328 for operating an illegal gambling operation. It was the primary, or most serious, offense in one of these cases. The offender did not receive an active term of incarceration to serve after sentencing.

Under § 58.1-4018, fraudulently tampering with lottery machinery is a Class 3 felony subject to imprisonment for five to twenty years. According to the Circuit Court CMS data, during the same six-year period, there were three convictions for this offense. It was not the most serious offense in any of these cases.

Existing data do not contain sufficient detail to determine the number of felony convictions that may occur as the result of the proposal.

Impact of Proposed Legislation:

State adult correctional facilities. Because it creates new felony offenses, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal. Therefore, the magnitude of the impact on prison beds cannot be quantified.

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

Adult community corrections programs. Because the proposal could result in felony and misdemeanor 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 quantified.

¹ Under current law, the proposed felony offenses 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.

Virginia’s Sentencing Guidelines. Since the proposal defines new felony offenses, convictions under the proposed sections of the *Code* would not be covered by the Sentencing Guidelines 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. If enacted, the new felonies would not be defined as violent in § 17.1-805(C) for the purposes of the Guidelines. No adjustment to the Guidelines is necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice, 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, 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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