



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 648

(Patron – Bell)

Date Submitted: 1/12/04

LD #: 04-0179232

Topic: Peeping or spying into a dwelling or enclosure

Proposed Change:

The proposal amends § 18.2-67.5:1 to add peeping or spying into a dwelling or using a peephole to the list of misdemeanor sexual offenses that are punished as a Class 6 felony if the offender has two previous convictions for any combination of misdemeanor sexual offenses listed in this statute. The proposal also amends § 9.1-902 to require offenders convicted of a felony for a third or subsequent act defined under § 18.2-67.5:1 to register with the Sex Offenders and Crimes Against Minors Registry (SOR) maintained by the State Police.

By expanding SOR provisions to include any felony conviction for a third or subsequent conviction under § 18.2-67.5:1, an offender convicted for this offense who fails to register or reregister with, or who provides false information to, the Registry is guilty of a Class 1 misdemeanor.

Currently, under § 18.2-130, it is a Class 1 misdemeanor to enter the property of another and secretly peep, spy, or attempt to spy through a window, door or other opening of any structure; it is also a Class 1 misdemeanor to use a peephole or other opening to peep, spy, or attempt to spy into a restroom, dressing room, locker room, hotel room, and the like for the purpose of viewing any nonconsenting person in a state of undress who would otherwise have a reasonable expectation of privacy. Under current *Code*, the penalty remains the same, regardless of the offender's prior record of sexual offenses.

To be convicted of a Class 6 felony under the existing § 18.2-67.5:1, an offender must have committed a third act of sexual battery, attempted sexual battery, consensual intercourse with a child, indecent exposure, or any combination of these crimes, within 10 years of the first conviction for one of these offenses.

Data Analysis:

Based on fiscal year (FY) 2001 and FY2002 Local Inmate Data System (LIDS) data, a total of 191 offenders held pre- or post-trial in jail were convicted under § 18.2-130. Of the 147 convictions for peeping or spying into a dwelling or other structure (§ 18.2-130(A)), 89% of the offenders received a local-responsible (jail) term, with a median sentence of 90 days. Six offenders, convicted of additional

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charges, were sentenced to state-responsible (prison) terms, with a median term of one year. There were also 44 offenders convicted of using a peephole to view a nonconsenting person (§ 18.2-130(B)). Nearly all (93%) were sentenced to a local-responsible (jail) term; the median sentence was 45 days.

According to FY2001 and FY2002 LIDS data, eight offenders held pre- or post-trial in jail were convicted of a known third offense under § 18.2-130 (tracking of prior misdemeanor convictions is limited because statewide LIDS data with Virginia-specific offense codes has existed only since January 1, 2000). Of the offenders identified, each received a jail term; the median sentence was 8.5 months.

Under § 18.2-67.5:1, a third or subsequent conviction for sexual battery, attempted sexual battery, consensual intercourse with a child, or indecent exposure within ten years is punishable as a Class 6 felony. According to FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, ten offenders were convicted of third offense indecent exposure. Of these, three offenders (30%) were sentenced to probation and one (10%) received a local-responsible (jail) sentence of six months. The remaining six offenders (60%) received state-responsible (prison) terms with a median sentence of 1.8 years.

Impact of Proposed Legislation:

The proposed legislation raises the penalty structure for an existing crime and expands provisions for the Sex Offenders and Crimes Against Minors Registry (SOR). Application of sentences for similar crimes indicates that the proposal would increase the need for state-responsible (prison) bed space. In this scenario, over the next six years, the net high state-responsible impact would be approximately nine beds. This represents a minimum estimate of the impact because data available through LIDS on offense-specific crimes can only be used to track prior offenses for offenders jailed on or after January 1, 2000. Therefore, existing databases are insufficient to estimate fully the number of misdemeanor cases that would be affected by the felony provisions of the proposal.

In addition, there will be an impact on local-responsible (jail) bed space; based on the methodology, there will be a reduced need for approximately two jail beds statewide, for a savings to the state of \$26,185 (using FY2002 jail inmate costs) for reimbursement to localities. There would be a savings statewide for the localities of \$17,819 for the same beds.

The anticipated impact on community corrections programs is expected to be twofold. First, there may be a shift from local to state-funded programs. And second, on average, the need for a program placement will be delayed by about two months (the difference in time actually served for the current misdemeanor versus the time estimated to be served under the proposed felony). A third factor may impact community corrections programs; that is, the supervision for a felony crime may be longer than for the comparable crime when it was defined as a misdemeanor. For felony convictions for indecent exposure under § 18.2-67.5:1, 90% had sentences that included supervised probation; of those, the supervision periods ranged from 18 months to an indefinite term of supervision, with a median of five years supervision.

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Additionally, there may be an increased need for prison or jail bed space based on probation or post-release supervision revocations. A judge can impose and suspend more time for a felony than a misdemeanor, and, consequently, if an offender violates release conditions, the potential amount of time that a judge may re-impose for a revocation is longer as well. For felony convictions for indecent exposure under § 18.2-67.5:1 (the comparison offense), all or part of the sentence was suspended in 80% of the cases; of those, the suspended time ranged from about six months to eight years, with a median of almost four years suspended from the sentence.

Neither misdemeanor convictions under § 18.2-130 nor felony convictions under § 18.2-67.5:1 are covered by the guidelines as the primary offense but such convictions may augment the guidelines recommendation if a covered offense is the most serious at conviction. No adjustment to the sentencing guidelines would be necessary under the proposal.

The Department of Juvenile Justice (DJJ) reports that if the proposal is enacted, the minimum confinement assigned under the Department's Length of Stay (LOS) guidelines would change from 3-6 months to 6-12 months. Additionally, because the proposal increases the penalty for an existing crime from a misdemeanor to a felony, a juvenile adjudicated for this crime would be eligible automatically for commitment, since existing *Code* specifies that a juvenile is eligible for commitment if he is adjudicated for a felony, has a prior felony adjudication or has accumulated a total of four Class 1 misdemeanor adjudications. DJJ, however, does not believe that the proposal will affect Juvenile Correctional Center (JCC) bed space needs.

Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY05	FY06	FY07	FY08	FY09	FY10
3	6	7	8	8	9

Estimated Six-Year Impact in Local-Responsible (Jail) Beds

FY05	FY06	FY07	FY08	FY09	FY10
-2	-2	-2	-2	-2	-2

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$201,546 for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary's Committee on Inmate Forecasting in 2003.
2. New cases representing local-responsible sentences were based on forecasts developed by the Virginia Criminal Sentencing Commission using the LIDS database.

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3. Cost per prison bed was assumed to be \$22,606 per year as provided by the Department of Planning and Budget to the Commission pursuant to §30-19.1:4. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.***

4. Cost per jail bed was based on The Compensation Board's FY2002 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$29.81 per day or \$10,889 per year. The local cost was calculated by using the daily expenditure cost of \$54.12 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$20.29 per day or \$7,410 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.***

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2004, is phased in to account for case processing time.
2. Release dates for state-responsible felony convictions were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2002. For sex offenses, this rate was 9.87%. Release dates for local-responsible felony convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by felons sentenced in FY2003 to local jails; this rate was 89.7%. Release dates for misdemeanor convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by misdemeanants sentenced in FY2003 with no accompanying felony conviction; this rate was 39.66%.
3. Sentences for persons affected by the felony provisions under the proposed legislation were randomly drawn from sentences for persons convicted under § 18.2-67.5:1 for indecent exposure (third or subsequent offense within 10 years).
4. Sentences for persons affected by the misdemeanor provisions under the proposed legislation were randomly drawn from sentences for persons convicted under § 9.1-902 for misdemeanor provision of failing to register, reregister, or provide false information during registration with SOR.

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