



## Impact Analysis on Proposed Legislation

*Virginia Criminal Sentencing Commission*

### House Bill No. 663

(Patron – Bell)

Date Submitted: 12/12/03

LD #: 04-6460232

Topic: Filming, videotaping or photographing of another

#### Proposed Change:

The proposal amends § 18.2-386.1 of the *Code of Virginia* to increase the penalty for unlawful filming, videotaping or photographing of a nonconsenting person under the age of 18 from a Class 1 misdemeanor to a Class 6 felony for the first conviction, with enhancement to a Class 5 felony for any second or subsequent conviction.

Unlawful filming, videotaping or photographing of a nonconsenting person occurs if (1) that person is totally nude, clad in undergarments, or in the state of undress so as to expose the genitals, pubic area, buttocks or female breast in a restroom, dressing room, locker room, hotel room, motel room, tanning bed, tanning booth, bedroom or other location and (2) circumstances are such that the person would have a reasonable expectation of privacy. Currently, this crime is a Class 1 misdemeanor and there is no penalty enhancement if the victim is under the age of 18.

#### Data Analysis:

Based on fiscal year (FY) 2001 and 2002 Local Inmate Data System (LIDS) data, 11 offenders held pre- or post-trial in jail were convicted under § 18.2-386.1. All of the offenders convicted under this statute received some term of incarceration; most (64%) were sentenced to a local-responsible (jail) term, with a median sentence of 60 days. Data is insufficient to determine which of these crimes, if any, involve victims under the age of 18.

Misdemeanor convictions are not covered by the sentencing guidelines as the primary or most serious offense but may augment the sentence recommendation as additional offenses.

#### Impact of Proposed Legislation:

The proposed legislation raises the penalty structure for an existing crime, when the victim is under the age of 18. This proposal may increase the need for state-responsible (prison) bed space. Conversely, the proposal may reduce the need for local-responsible (jail) bed space. However, data is insufficient to determine the number of cases, if any, that involve victims under the age of 18. Therefore, the impact of the proposal cannot be quantified. No adjustment to the sentencing guidelines would be necessary under the proposal.

**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 and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

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The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.