



## Impact Analysis on Proposed Legislation

*Virginia Criminal Sentencing Commission*

### House Bill No. 2564

*(Patron – Watts)*

**Date Submitted:** 1/11/2005

**LD #:** 05-4396544

**Topic:** Aggravated sexual battery and taking indecent liberties

#### **Proposed Change:**

The proposed legislation amends § 18.2-67.3 to define as aggravated sexual battery the sexual abuse of an individual age 15, but less than 18, by a parent, step-parent, grandparent, or step-grandparent when the act is accomplished against the will of the individual by force, threat or intimidation, or through the use of the individual's physical helplessness. The proposal also amends §§ 18.2-361 and 18.2-370 to broaden the definition of parent, grandparent, and child to include step-parent, step-grandparent, step-child, and step-grandchild.

Under the proposal, the penalty for taking indecent liberties with a child by a parent, step-parent, grandparent or step-grandparent would increase from a Class 6 felony, as designated in § 18.2-370.1, to a Class 5 felony if the child is age 14 to 17, and to a Class 4 felony if the child is less than age 14. Currently, § 18.2-370.1 states that it is a Class 6 felony for a person in a custodial or supervisory relationship—including the parent, step-parent, grandparent, and step-grandparent—to take indecent liberties with a child who is under the age of 18. Under the proposal, references to parents, grandparents, etc., would be excluded in describing those in a custodial or supervisory relationship over a child.

#### **Analysis:**

According to the fiscal year (FY) 2002 and FY2003 Pre/Post-Sentence Investigation (PSI) database, there were 94 convictions for aggravated sexual battery of a victim 13 years of age or older. The victim's relationship to the offender was listed as "family" in 27% of the cases that reported a relationship category on the PSI. Only one of the familial cases involved a victim age 15 to 17, and the offender in the case was sentenced to 30 years incarceration.

According to the fiscal year (FY) 2002 and FY2003 Pre/Post-Sentence Investigation (PSI) database, there were 140 convictions for taking indecent liberties of a child involving offenders in a custodial or supervisory relationship (§ 18.2-370.1). The victim's relationship to the offender was listed as "family" in 58% of the cases that reported a relationship category on the PSI. Of the indecent liberties cases involving a family member (42 cases), 41% of the victims were under the age of 14, and 59% were age 14 to 17. When the victim was under the age of 14, offenders were most likely (52%) to be sentenced to a prison term (median sentence 3 years), while 24% received a local-responsible (jail) sentence. The remaining 24% did not receive an active term of incarceration and the relationship is family. When the victim was age 14 to 17, offenders were

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most likely (56%) to be sentenced to a prison term (median sentence 2 years), while 24% received a local-responsible (jail) sentence. The remaining 20% did not receive an active term of incarceration.

### **Impact of Proposed Legislation:**

Because the proposed legislation expands the applicability of aggravated sexual battery and increases penalties for taking indecent liberties involving familial members, the proposal may have an impact on the state-responsible (prison) bed space needs of the Commonwealth. With respect to aggravated sexual battery, the databases available to the Commission are insufficient to provide information on the number of new felony convictions that may result under the proposed legislation. However, there is sufficient information to make a minimum estimate an impact for the increased penalty structure for indecent liberties involving family. 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 at least 15 beds.

In addition, there will be an impact on local-responsible (jail) bed space; based on the methodology, there will be an increased need for a partial jail bed statewide, for a cost to the state of \$2,093 (using FY2003 jail inmate costs) for reimbursement to localities. There would be an additional cost for the localities of \$1,738 for the same partial bed.

Both aggravated sexual battery and indecent liberties are felonies covered by the sentencing guidelines. However, no adjustment to Virginia's sentencing guidelines would be necessary under the proposal.

The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to increase Juvenile Correctional Center (JCC) bed space needs.

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

FY06	FY07	FY08	FY09	FY10	FY11
2	6	9	12	14	15

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$351,875 for periods of imprisonment in state adult correctional facilities and \$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 2004.
2. New cases representing local-responsible sentences were based on forecasts developed by the Virginia Criminal Sentencing Commission using the LIDS database.
3. Cost per prison bed was assumed to be \$22,854 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.*

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4. Cost per jail bed was based on The Compensation Board's FY2003 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$27.48 per day or \$10,037 per year. The local cost was calculated by using the daily expenditure cost of \$54.51 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 \$22.83 per day or \$8,338 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, 2005, 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, 2003. For violent offenses, this rate was 10.1%. 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%.
3. For persons convicted of custodial indecent liberties where the victim is a family member and less than 14 years of age, projected sentences were randomly drawn from sentences for persons convicted under existing Class 4 felony for indecent liberties of a child less than 14 years of age (§ 18.2-370). For persons convicted of custodial indecent liberties where the victim is a family member and 14 to less than 18 years of age, projected sentences were randomly drawn from sentences for persons convicted under the existing Class 5 felony for carnal knowledge of a child 13 to less than 15 years of age (§ 18.2-63).

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