



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1268

(Patron – Janis)

LD#: 06-1104440

Date: 12/2/2005

Topic: Use of communications systems to facilitate certain offenses involving children

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$7,723 (.32 bed)
- **Local Adult Correctional Facilities:**
\$1,483 (.16 bed)
- **Adult Community Corrections Programs:**
Negligible (\$0)

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

Summary of Proposed Legislation:

The proposal amends § 18.2-374.3 to increase the penalty in subsection A from a Class 6 felony to a Class 5 felony when a person uses a communications system to facilitate certain offenses involving children. The proposal also adds prostitution (§ 18.2-355) and crimes against nature (§ 18.2-361) to the list of crimes in subsection A for which using a communications system is prohibited; currently, §§ 18.2-370 (indecent liberties) and 18.2-374.1 (production or distribution of sexually explicit materials) comprise the list of crimes in subsection A.

The proposal also establishes venue to include any place in which the communications system contact was initiated or received, and that if a motor vehicle was used in committing the offense, it would be subjected to forfeiture.

Analysis:

According to the Fiscal Year (FY) 2002 and FY2003 Pre/Post-Sentence Investigation (PSI) database, one offender was convicted under subsection A of § 18.2-374.3. This person was sentenced to no active term of incarceration.

Impact of Proposed Legislation:

Adult state correctional facilities. Because the proposed legislation increases the penalty for an existing crime from a Class 6 felony to a Class 5 felony and expands the manner in which the crime may be committed, the proposal will increase state-responsible (prison) bed space needs. However, the measurable increase is estimated to be .32 bed.

Adult local correctional facilities. The proposal will increase local-responsible (jail) bed space needs. However, the measurable increase is estimated to be .16 bed.

Adult community corrections programs. Data are insufficient to determine the impact of the proposal on community corrections programs.

Virginia's sentencing guidelines. The existing crime is not covered by Virginia's sentencing guidelines as the primary (or most serious) offense in a case and the proposal does not change that; however, convictions under the proposed statute may augment the guidelines recommendation if a covered offense is the most serious at conviction. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to increase juvenile detention facilities bed space needs.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$7,723 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 2005.
2. New cases representing state-responsible sentences were based on the admissions forecast as approved by the Secretary's Committee on Inmate Forecasting in July 2005.
3. To estimate the number of offenders was adjusted to reflect the change in the number of offenders with the requisite underlying crimes. Based on FY2002 and FY2003 PSI data, there were 242 offenders sentenced for a crime that is currently among the underlying crimes, and there were 70 offenders sentenced for crimes that will become an underlying crime under the proposal. This indicates that the number of offenders affected under the proposal will be increased by about 30%.
4. Cost per prison bed was assumed to be \$23,966 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.*
5. Cost per jail bed was based on The Compensation Board's FY2004 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$26.03 per day or \$9,506 per year. The local cost was calculated by using the daily expenditure cost of \$54.37 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 \$23.99 per day or \$8,763 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, 2006, is phased in to account for case processing time.
2. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2004. For sex offenses, this rate was 11.05%.
3. To gauge the impact of changing the penalty from a Class 6 to a Class 5 felony, sentences were randomly selected from those sentenced for subsection B of § 18.2-374.3 (use communications systems to solicit minor for certain crimes). To gauge the impact of increasing the number of crimes that would trigger a violation of subsection A of § 18.2-374.3, sentences were randomly selected from those sentenced for subsection B of § 18.2-374.3.