



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1338

(Patron – Bell)

LD#: 06-13343232

Date: 1/10/2006

Topic: Sexual battery

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

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

Summary of Proposed Legislation:

The proposal amends clause (i) of § 18.2-67.4 to redefine the conditions constituting sexual battery. In the current *Code of Virginia*, an offender is guilty of sexual battery if he or she sexually abuses, as defined in § 18.2-67.10, the complaining witness against his or her will, by force, threat, intimidation or ruse, or through the use of the complaining witness's mental incapacity or physical helplessness. The proposal adds to the list of mechanisms used to sexually batter the element of surprise and removes the condition that the act was done "through the use of the complaining witness's mental incapacity or physical helplessness."

Sexual battery as defined in § 18.2-67.4 is a Class 1 misdemeanor. However, an offender convicted of sexual battery is guilty of a Class 6 felony under § 18.2-67.5:1 if he has two or more previous convictions within a ten-year period for sexual battery, attempted sexual battery, consensual intercourse with a child, or indecent exposure.

Analysis:

According to fiscal year (FY) 2003 and 2004 Local Inmate Data System (LIDS) data, 337 offenders were convicted of sexual battery under clause (i) of § 18.2-67.4. The overwhelming majority of these offenders (96%) were sentenced to local-responsible (jail) terms with a median sentence of five months. The remaining 4% of offenders were sentenced to probation.

Also from the FY2003 and FY2004 LIDS data, ten offenders were convicted of third offense sexual battery under § 18.2-67.5:1. Of these, six (60%) were sentenced to state-responsible (prison) terms with a median sentence of four years. The remaining four offenders (40%) received local-responsible (jail) terms (median sentence just over six months).

Impact of Proposed Legislation:

State adult correctional facilities. The proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, databases available to the Commission do not provide sufficient information to assess the impact. Therefore, the impact cannot be determined.

Local adult correctional facilities. The proposal may increase local-responsible (jail) bed space needs, but the impact cannot be determined.

Adult community corrections programs. The potential impact on adult community corrections cannot be determined.

Virginia's sentencing guidelines. Misdemeanor convictions under § 18.2-67.5:1 are not covered as primary offenses by the guidelines, but may appear as additional offenses that augment the guidelines recommendation. No adjustment to the guidelines is 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 the bed space needs of juvenile detention facilities.

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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