



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 846

Amendment in the Nature of a Substitute

(Patron Prior to Substitute – Albo)

LD#: 06-1385204

Date: 1/26/2006

Topic: Penalties for certain sex crimes

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 §§ 18.2-48, 18.2-61, 18.2-67.1, 18.2-67.2 and 19.2-303, and adds § 18.2-370.3 relating to the sentences for certain sex crimes.

For the crimes of abduction with intent to defile (§ 18.2-48(ii)) or abduction of a child under 16 for the purpose of concubinage or prostitution (§ 18.2-48(iii)) the proposal adds a minimum requirement of a 40-year suspended sentence if the offender is sentenced to less than life imprisonment.

For the crimes of rape (§ 18.2-61), forcible sodomy (§ 18.2-67.1) and object sexual penetration (§ 18.2-67.2), if the victim is a child under the age of 13, the offender is more than three years older, and if the crime was done in the commission of, or subsequent to, a violation of certain abductions (§§ 18.2-47(A) or 18.2-48), certain burglaries (§§ 18.2-89, 18.2-90 or 18.2-91), or aggravated malicious wounding (§ 18.2-51.2), the proposal adds, in each statute, (a) a mandatory minimum penalty of 25 years and (b) the requirement that if the active sentence is less than life imprisonment, then the court shall suspend a minimum of 40 years. In addition, under the proposed § 19.2-303, if any time is suspended, then the amount of suspended time must equal the statutory maximum and that the offender be placed on postrelease supervision for at least three years including electronic monitoring by Global Positioning System (GPS). Currently, none of these crimes have mandatory minimum sentences unless prosecuted under the provisions of § 18.2-67.5:3 for a subsequent offense, and there are no specific requirements regarding suspended time or postrelease supervision.

§ 18.2-370.3 to prohibit any adult previously convicted of a violation of §§ 18.2-61, 18.2-67.1, or 18.2-67.2 from working or engaging in any volunteer activity on property he knows or has reason to know is a public or private elementary or secondary school or child day center property. A violation of this section is punishable as a Class 6 felony. Furthermore, any employer of a person who violated this section in the course of such person's employment and the school or child day center where the violation occurred are immune from civil liability unless they had actual knowledge that such person had been convicted of a violation of §§ 18.2-61, 18.2-67.1, or 18.2-67.2.

The proposed § 19.2-303 requires for certain crimes (§§ 18.2-48, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-370, 18.2-370.1) committed on or after July 1, 2006, where some portion of the sentence is suspended, that the judge order that the period of suspension be for a length of time equal to the statutory maximum. In addition, if the conviction is for rape (§ 18.2-61), forcible sodomy (§ 18.2-67.1) or object sexual penetration (§ 18.2-67.2) committed against a child under the age of 13, the offender is to be placed on at least three years of active supervision under a Department of Corrections' postrelease supervision program to include electronic monitoring by means of a Global Positioning System (GPS) tracking device. Currently, these are not requirements under § 19.2-303.

Analysis:

In fiscal year (FY) 2002 and FY2003, seven offenders were convicted of rape, forcible sodomy or object sexual penetration of a child under the age of 13 (in violation of § 18.2-61, 18.2-67.1, or 18.2-67.2) where the offender was also charged with an offense under §§ 18.2-47(A), 18.2-48, 18.2-51.2, 18.2-89, 18.2-90, or 18.2-91. All received a prison term where the median prison sentence (the middle value, where half the sentences were higher and half were lower) was 15 years.

Data available to the Commission do not contain sufficient detail to identify the number of incidents in which persons previously convicted of these crimes have obtained employment with a public or private elementary or secondary school or child day care center. However, according to the same two years of PSI data, there was a total of 517 offenders convicted of the crimes for which employment and volunteerism would be restricted under the proposal.

Offenders convicted under truth-in-sentencing/no-parole provisions are required to serve at least 85% of the active term (imposed sentence less any suspended time) ordered by the court. According to the Department of Corrections (DOC), rape and sexual assault offenders sentenced under no-parole laws are serving approximately 89% of the sentence (as of December 31, 2004). At this rate, an offender would serve about 22 years of a 25-year term. Older offenders, however, will be eligible for geriatric release under § 53.1-40.01 when they reach the age of 60 (if they have served at least 10 years) or age 65 (if they have served at least 5 years).

Impact of Proposed Legislation:

State adult correctional facilities. The proposal is expected to increase state-responsible (prison) bed space needs; however, the magnitude cannot be quantified. The portion of the impact that can be attributed to changes in §§ 18.2-48, 18.2-61, 18.2-67.1, and 18.2-67.2 will be outside of the six-year window required by § 30-19.1:4. The portion that can be attributed to the new felonies under § 18.2-370.3 cannot be determined.

Local adult correctional facilities. The proposal will have an impact on local-responsible (jail) bed space needs due to the new felonies defined in § 18.2-370.3, but the magnitude cannot be determined.

Adult community corrections programs. Because the proposal requires offenders convicted of the specified crimes to submit to GPS surveillance for at least three years upon release from prison, the proposal may have an impact on adult community corrections. There are two primary modes of GPS tracking for offenders—passive and active. Under passive surveillance, the movement of the offender is recorded and a probation officer later reviews the data to ensure the offender has complied with the conditions and restrictions of community supervision. Under active tracking, the movement of the offender is monitored continuously. Active GPS surveillance is more costly than passive surveillance. In Florida, which had 522 offenders under GPS surveillance in January 2005, the cost of passive GPS monitoring of an offender is approximately \$4 per day, while the cost of active GPS monitoring is \$9 per day (Florida House of Representatives Staff Analysis of House Bill 1877 (2005 session)). These

figures do not include staff time necessary to review offender movement data or respond to breaches identified by the GPS system.

Virginia's sentencing guidelines. Convictions for rape, forcible sodomy and object sexual penetration (under § 18.2-61, 18.2-67.1, and 18.2-67.2) are covered by Virginia's sentencing guidelines as the primary (or most serious) offense; however, no adjustment to the guidelines is necessary under the proposal. Mandatory sentences required by statute supersede any recommendations of the sentencing guidelines that are lower than the mandatory term.

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 since mandatory minimum sentences are not applicable to juvenile offenders. Also, the Department's Length-of-Stay (LOS) guidelines will not be affected by the proposed changes.

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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