



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 376 (Patron – McDougle)

LD#: 06-1319408

Date: 12/13/2005

Topic: Penalties for certain sex crimes

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$2,218,729 (93 beds)
- **Local Adult Correctional Facilities:**
-\$46,643 (-5 beds)
- **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 relating to the sentences for certain sex crimes. 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 proposal adds a mandatory minimum penalty of 25 years and, if the offender is sentenced to less than life imprisonment, the judge would be required to impose a suspended sentence of no less than 40 years and be subject to revocation for the duration of the offender’s life. For the crimes of abduction with intent to defile (subsection ii of § 18.2-48) and abduction of a child under sixteen for the purpose of concubinage or prostitution, if the offender is sentenced to less than life imprisonment, the proposal requires the judge to impose a suspended sentence of no less than 40 years and be subject to revocation for the duration of the offender’s life. Currently, none of these crimes have mandatory minimum sentences unless prosecuted under the provisions of § 18.2-67.5:3 for a subsequent offense, nor do they require mandatory life-time terms of suspended sentences.

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, 284 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). In nearly all of these cases (98%), the offender was being sentenced for their first conviction for any of the three offenses. Furthermore, nearly all (97%) of the 284 offenders received a prison term where the

median prison sentence (the middle value, where half the sentences were higher and half were lower) was 12 years.

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).

Under existing provisions (§ 18.2-67.5:3, adopted in 1995), a prosecutor may seek a mandatory life term for offenders convicted of a second rape, forcible sodomy or object sexual penetration, regardless of victim age. The current statute, however, requires the prosecutor to give the defendant 30 days notice of his intent to seek life imprisonment. According to Pre/Post-Sentence Investigation (PSI) data, no offenders have been sentenced under the existing statute.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal is expected to increase state-responsible (prison) bed space needs by 93 beds in FY2012. As most offenders convicted of the specified offenses currently receive sentences in excess of six years, much of the potential impact associated with the proposal would occur beyond the six-year forecast window required by § 30-19.1:4.

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

FY07	FY08	FY09	FY10	FY11	FY12
2	8	21	37	60	93

Local adult correctional facilities. The proposal is expected to reduce local-responsible (jail) bed space needs by five beds, as the few offenders who historically have received jail terms will receive prison sentences as a result of the proposed mandatory terms. This represents a cost savings to the state of \$46,643 and additional savings to localities of \$42,997.

Estimated Six-Year Impact in Local-Responsible (Jail) Beds

FY06	FY07	FY08	FY09	FY10	FY11
-2	-4	-4	-5	-5	-5

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 is \$2,218,729 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 2004.
2. New cases representing state-responsible sentences were based on forecasts developed for the Secretary's Committee on Inmate Forecasting and approved in July 2005.
3. 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.*
4. 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 on criminal provisions, which would be effective on July 1, 2006, is phased in to account for case processing time.
2. The 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 sexual assault offenses the rate was 11.1%. 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. Persons eligible for a mandatory term of 25 years under the proposal were treated as having been sentenced to the mandatory 25 years. If the actual sentence already exceeded the proposed mandatory minimum penalty, the case was presumed to have no impact.

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