



## Fiscal Impact Statement for Proposed Legislation

### *Virginia Criminal Sentencing Commission*

#### House Bill No. 34

#### *Amendment in the Nature of a Substitute (Patron Prior to Substitute – Ingram)*

**LD#:** 08-1567564

**Date:** 2/28/2008

**Topic:** Offenses against children

#### **Fiscal Impact Summary:**

- **State Adult Correctional Facilities:**  
Cannot be determined, likely to be negligible
- **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 adds § 18.2-370.6 and amends § 9.1-902 relating to offenses against children. The proposal creates a new Class 1 misdemeanor for an adult to kiss, with lascivious intent, a child under the age of 13 on the mouth while knowingly and intentionally penetrating the mouth of the child with his tongue. The proposal also adds this new crime as an offense requiring registration with the Sex Offender and Crimes Against Minors (SOR) Registry. Registry violations are governed by § 18.2-472.1. For registrants not defined as “sexually violent,” failure to register or re-register as required is a Class 1 misdemeanor for the first violation and a Class 6 felony for a second or subsequent violation.

The General Assembly has revisited § 9.1-902 several times in the past five sessions. In the 2007 session, the section was reorganized as part of an expansion of the offenses requiring registration and the information required of registrants (the legislation also restructured the penalties involving child pornography). In the 2006 session, there was an expansion of the offenses requiring registration and the penalties for SOR violations were increased for second violations. In the 2006 session, the offenses requiring registration were expanded and registration included most juveniles adjudicated delinquent for a Registry offense. In the 2003 session, was moved from Title 19.2 as part of the recodification of Title 9 (now Title 9.1). In addition, the 2006 session of the General Assembly restructured the § 18.2-472.1 penalties to increase the seriousness of a second or subsequent violation.

#### **Analysis:**

There is no information available regarding the number of incidents involving the act described in the proposal.

Data related to Registry violations, however, are available. According to the Court Automated Information System (CAIS) for fiscal year (FY) 2006 and 2007, there were 515 felony convictions for

Registry violations under § 18.2-472.1. Of these, 193 were for offenses committed since July 1, 2006 when the new penalty structure came into effect.<sup>1</sup>

According to the Local Inmate Data System (LIDS) for calendar year (CY) 2005 and 2006, 721 offenders held pre or post-trial in jail were convicted of a Registry violation under § 18.2-472.1. Of these, 65 were being held for offenses committed since July 1, 2006. Of the 65, 18 did not have a “sexually violent” conviction. Fourteen of the 18 were convicted of a misdemeanor for a first Registry violation (86% received a local-responsible (jail) sentence with a median term of four months); four were convicted of the felony subsequent violation (none were sentenced to prison, while 75% were sentenced to jail with a median term of six months).

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Because it expands the applicability of a Class 6 felony associated with Sex Offender Registry violations, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, criminal justice databases are insufficient to determine the number of additional felony convictions that may result from the proposal. Nonetheless, the impact on prison bed space needs is expected to be negligible because it would entail the original misdemeanor crime, followed by two separate Registry violations; nearly all of the potential impact is likely to be outside of the six-year forecast window required by § 30-19.1:4. Although the impact of the proposal cannot be quantified, it is likely to be negligible.

**Local adult correctional facilities.** The proposal may increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be quantified with existing data.

**Adult community corrections resources.** The proposal may increase the need for adult community corrections resources; however, the magnitude of the impact cannot be quantified with existing data.

**Virginia’s sentencing guidelines.** The sentencing guidelines do not cover misdemeanor cases and, therefore, would not cover convictions under the proposed § 18.2-370.6. The guidelines also do not cover convictions for Sex Offender Registry violations under § 18.2-472.1 as the primary (most serious) offense in the case. A conviction under one of these provisions, however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the sentencing 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 the bed space needs of juvenile detention facilities.

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**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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<sup>1</sup> Multiple counts were consolidated into a single event. It is difficult to determine whether the felony conviction was related to a “sexually violent” offender who committed his first Registry violation or to an offender not defined as sexually violent who committed his second or subsequent Registry violation.