



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 973

(Patron – Shannon)

ID#: 08-5951824

Date: 12/14/2007

Topic: Taking indecent liberties with children

#### 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 §§ 18.2-370 and 18.2-374.3 to expand the crimes of indecent liberties and use of a communication system to facilitate certain offenses involving children. Under the proposed legislation, these crimes would include cases in which a person proposes that a child feel or fondle the child's own sexual or genital parts.

Currently, § 18.2-370 states that it is a Class 5 felony for a person 18 years of age or over to take indecent liberties with a child under the age of 15. Indecent liberties is defined by § 18.2-370 as the 1) exposure of sexual parts to a child or proposal that a child expose his sexual parts, 2) proposal that a child fondle the offender's sexual parts or proposal that the offender fondle the child's sexual parts, 3) proposal that the child perform an act of sexual intercourse or any act under § 18.2-361 (bestiality or non-forcible sodomy), or 4) enticement, etc., of a child to enter a vehicle, house, etc., for any purpose specified above. The circumstance described by the proposal is not explicitly included in the existing statute. The 2005 General Assembly expanded the application of § 18.2-370 from children under the age of 14 to children under the age of 15.

Under § 18.2-374.3, the crime of using a communication system to facilitate certain offenses involving children is based, in part, on elements of indecent liberties listed in § 18.2-370. The 2007 General Assembly increased the penalties (and created several mandatory minimum terms) for using a communication system to solicit minors with the intent to take indecent liberties. Penalties under § 18.2-374.3 (subsections C and D) vary based on the ages of the offender and the child involved and the offender's prior convictions for the same offense.

#### Analysis:

According to fiscal year (FY) 2006 and 2007 Sentencing Guidelines (SG) data and including only cases with an offense date on or after July 1, 2005<sup>1</sup>, there were 51 convictions for indecent liberties under § 18.2-370. Of the 51 offenders, 31% received a local-responsible (jail) term (median sentence

<sup>1</sup> These cases reflect the statutory changes made by the 2005 General Assembly. There were 45 additional cases sentenced under § 18.2-370 during this time period whose offenses were governed by the earlier provisions.

of 6.5 months). Approximately half (51%) received a state-responsible (prison) term; for offenders committed to prison, the median sentence was 2.1 years. One of these offenders was sentenced to the maximum penalty of ten years allowed by statute, but there were two other cases with multiple counts (or additional offenses) that resulted in sentences exceeding ten years.

The Sentencing Commission has not recorded any cases in which an offender has been sentenced under the penalties in § 18.2-374.3 that became effective on July 1, 2007. In 2006, however, the Sentencing Commission conducted a special study of offenses involving online/electronic solicitation of minors and child pornography. According to the Commission's data, from July 2002 through April 2006, there were a total of 67 cases in which conviction for a crime defined in § 18.2-374.3 was the primary (or most serious) offense in the case. Of the total, 38 offenders were convicted of a Class 5 felony for using a communication system to solicit minors for prostitution, sodomy, pornography, or any activity constituting indecent liberties. In these cases, 39% of offenders were sentenced to a state-responsible (prison) term of one year or more; the median sentence for prison cases was two years. More than one in three offenders (37%) were given a local-responsible (jail) term. The remaining offenders (24%) were given probation without an active term of incarceration. None of the offenders were sentenced to the maximum term available under the law at that time.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Because it expands the definition of existing felony crimes, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Criminal justice databases are insufficient to determine the number of additional cases that could be prosecuted as a result of the proposal; therefore, the impact on state-responsible bed space cannot be determined.

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

**Adult community corrections resources.** Because the proposal could result in additional felony offenders placed on community supervision, it may have an impact on adult community corrections resources; however, the magnitude of the impact cannot be quantified.

**Virginia's sentencing guidelines.** Offenses under §§ 18.2-370 and 18.2-374.3 are covered by the sentencing guidelines. The new element defined in the proposal may increase the number of cases sentenced under these statutes, but no adjustment to the guidelines would be necessary.

**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.**