



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 995

Amendment in the Nature of a Substitute (Patron Prior to Substitute – Bell)

LD#: 08-0914432

Date: 2/29/2008

Topic: Unlawful filming of another

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined, likely to be negligible
- **Local Adult Correctional Facilities:**
Cannot be determined, likely to be negligible
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
Cannot be determined
- **Juvenile Detention Facilities:**
Cannot be determined

Summary of Proposed Legislation:

The proposal amends § 18.2-386.1 to increase the penalty for a third or subsequent conviction for unlawfully filming or videotaping another from a Class 1 misdemeanor to a Class 6 felony. Currently, it is a Class 1 misdemeanor to knowingly and intentionally videotape, photograph, film, or create some other image of a nonconsenting person if (i) the person is nude, in undergarments, or in a specific state of undress in a restroom, dressing room or other specified location, or (ii) the videotape, photograph, film, or other image is created by placing the lens of the recording device in a position directly beneath or between a person's legs in order to capture an image of the person's intimate parts or undergarments covering intimate parts that would not otherwise be visible to the general public. If the violation involves a nonconsenting person under the age of 18, however, the penalty is currently a Class 6 felony.

The General Assembly created this crime in the 1994 session as a Class 1 misdemeanor; violation at that time consisted only of the elements listed in (i) above. In the 2004 session, the General Assembly increased the penalty to a Class 6 felony if the nonconsenting person is under the age of 18. The elements described in (ii) above were added by the 2005 General Assembly.

Analysis:

According to the Local Inmate Data System (LIDS) for calendar year (CY) 2005 and CY2006, a total of 19 offenders held pre- or post-trial in jail were convicted of a Class 1 misdemeanor under § 18.2-286.1 for unlawful filming. For 16 of the 19 offenders, this offense was the most serious charge at conviction. Nearly all of the offenders held in jail received an active term of incarceration for the offense; the median jail sentence was three months. Only one offender received no active time to serve. Based on LIDS data (dating back to CY2000), none of the offenders were found to have two prior convictions that would qualify him for the enhanced penalty under the proposal.

There were five other offenders held pre- or post-trial in jail who were convicted for unlawfully filming a minor, a Class 6 felony under § 18.2-386.1. The Class 6 felony was the most serious charge at conviction for three of the five offenders: one received no active time to serve, another received ten months in jail, and the third received a one-year prison sentence.

Impact of Proposed Legislation:

State adult correctional facilities. Because it creates a new Class 6 felony, the proposal could increase the need for state-responsible (prison) beds. The number of additional felony convictions that may result from the proposal, however, cannot be determined. Although the magnitude of the impact cannot be quantified, data suggest that it is likely to be negligible.

Local adult correctional facilities. The proposal could also increase the need for local-responsible (jail) beds. The magnitude of the impact cannot be determined, but it is expected to be negligible.

Adult community corrections resources. By expanding the applicability of an existing felony, the demand for local community-based and state community corrections programs may increase. The impact on local and state community corrections resources cannot be quantified.

Virginia's sentencing guidelines. As a new felony, the guidelines would not cover a third or subsequent conviction under § 18.2-386.1 when this crime is the primary (most serious) offense in the case. A conviction under this provision, 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 impact on bed space needs of juvenile correctional centers (JCC) cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the impact on the bed space needs of juvenile detention facilities cannot be determined.

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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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