

HOUSE JOINT RESOLUTION NO. 97

Directing the Virginia State Crime Commission to study the penalties for taking indecent liberties with children and prostitution-related offenses involving children. Report.

Agreed to by the House of Delegates, February 8, 2010

Agreed to by the Senate, March 9, 2010

WHEREAS, statistics demonstrate that penalties attached to statutes prohibiting taking indecent liberties with children are not being utilized to their fullest extent; and

WHEREAS, the penalties for violating statutes prohibiting taking indecent liberties with children provide for up to five years in prison and up to 10 years in prison, but, based on data from the Virginia Criminal Sentencing Commission, most individuals convicted of these crimes serve much less, if any, time in prison; and

WHEREAS, information based on pre- and postsentence investigation data from the Virginia Criminal Sentencing Commission shows that, in fiscal years 2002 and 2003, there were 246 convictions for the crime of taking indecent liberties, 99 of which were under the Class 5 felony (indecent liberties with a child under the age of 14) and 143 of which were under the Class 6 felony (indecent liberties with a child under the age of 18 over whom he or she has a custodial or supervisory relationship); and

WHEREAS, information based on pre- and postsentence investigation data from the Virginia Criminal Sentencing Commission shows that, in fiscal years 2002 and 2003, with respect to the Class 5 felony convictions, 18 percent of the cases resulted in no incarceration for the convicted, 31 percent resulted in a local jail term with a median of seven months spent in jail, and 51 percent of the cases resulted in a prison stay with a median of 1.9 years in duration. Of those convicted under § 18.2-370.1, 27 percent spent no time in a jail or prison, 31 percent spent a median of six months in a local jail, and 42 percent spent a median of two years in state prison; and

WHEREAS, the Code of Virginia defines a Class 5 felony as a term of imprisonment of not less than one year nor more than 10 years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both; and the Code of Virginia defines a Class 6 felony as a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both; and

WHEREAS, Virginia now has a law against human trafficking, but to date there have been no prosecutions under that law. There are many other crimes that are committed by human traffickers or that create an enabling environment for human trafficking that should be prosecuted, including withholding wages, pandering/pimping, and soliciting for prostitution; and

WHEREAS, there is growing concern across the country about how children arrested for prostitution-related offenses are treated, as these children are victims of a brutal form of child sexual abuse because children do not have the legal, psychological, or emotional capacity to consent to engage in commercial sex acts. Furthermore, in order to recover from this abuse, these children need special services; and

WHEREAS, it is believed that public safety will be enhanced by ensuring the penalties for violating statutes prohibiting taking indecent liberties with children are used to their fullest extent and that crimes such as withholding wages, pandering/pimping, and soliciting for prostitution are used more often to get human traffickers and those who create an enabling environment for human trafficking off the streets, and understanding what happens to children when they are arrested for prostitution-related offenses will enhance responsiveness to these children's needs; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State Crime Commission be directed to study the penalties for taking indecent liberties with children and prostitution-related offenses involving children. The Commission shall also study the disparity in penalties attached to statutes prohibiting taking indecent liberties with children and the actual penalties as applied to persons convicted of these offenses; how many actions have been brought for withholding wages, pandering/pimping, and soliciting for prostitution; and the need to address the process a child goes through if arrested for violating prostitution-related offenses.

In conducting its study, the Virginia State Crime Commission shall examine:

1. Why statutes prohibiting taking indecent liberties with children, including §§ 18.2-370 and 18.2-370.1, are not being utilized to their fullest extent;
2. To what extent fines are being assessed on those who violate the statutes prohibiting taking indecent liberties with children, including §§ 18.2-370 and 18.2-370.1;

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3. The best ways to ensure that statutes prohibiting taking indecent liberties with children, including §§ 18.2-370 and 18.2-370.1, are utilized to their fullest extent;

4. The need for legislative change or need to adjust state sentencing guidelines to ensure that statutes prohibiting taking indecent liberties with children, including §§ 18.2-370 and 18.2-370.1, are utilized to their fullest extent;

5. How many actions have been brought against employers who, willfully and with intent to defraud, fail or refuse to pay wages under the withholding wages provision in § 40.1-29 over the past five years;

6. How many prosecutions have been brought against those who take or detain a person for prostitution (pimps) under § 18.2-355, 18.2-356, or 18.2-357 or any other pandering/pimping-related offense over the past five years;

7. How many prosecutions have been brought against solicitors of prostitution (johns) under § 18.2-346 or any other prostitution-related offense over the past five years;

8. How many prosecutions have been brought against women or men for prostitution under § 18.2-346 or any other prostitution-related offense over the past five years;

9. How many children have been arrested for violating § 18.2-346, for being a prostitute, for prostitution, or for any other prostitution-related offense over the past 5 years; and

10. The process a child goes through if that child is arrested for violating § 18.2-346, for being a prostitute, for prostitution, or for any other prostitution-related offense.

Technical assistance shall be provided to the Commission by the Virginia Criminal Sentencing Commission, the Department of Corrections, and the Department of Juvenile Justice. All agencies of the Commonwealth shall provide assistance to the Virginia State Crime Commission for this study, upon request.

The Virginia State Crime Commission shall complete its meetings by November 30, 2010, and the Chairman shall submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the 2011 Regular Session of the General Assembly. The executive summary shall state whether the Virginia State Crime Commission intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a House or Senate document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.