



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 170

(Patron – Pogge)

LD#: 10101184

Date: 12/9/2009

Topic: Prostitution, subsequent conviction

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$660,210 (24 beds)
- **Local Adult Correctional Facilities:**
-\$101,275 (-9 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 § 18.2-350 by increasing the penalty and requiring confinement in jail for certain prostitution offenses. Under the proposal, a second or subsequent conviction (where the prior conviction is alleged in the warrant, indictment, or information) for a prostitution offense defined in §§ 18.2-346 through 18.2-349, or a substantially similar offense in another jurisdiction, requires confinement in jail of not less than 30 days. In addition, a third or subsequent such conviction is increased from a Class 1 misdemeanor to a Class 6 felony.

Currently, the penalty for any conviction for offenses delineated by §§ 18.2-346 through 18.2-349 are Class 1 misdemeanors. This statute has not been amended since the Title 18.2 recodification in 1975.

Analysis:

Under the proposal, a second or subsequent conviction for prostitution would require confinement in jail not less than 30 days. According to the Local Inmate Data System (LIDS) data for calendar years 2007 and 2008, 110 offenders, sentenced for misdemeanor crimes only, were identified as qualifying for prosecution under the proposed mandatory term of confinement for a subsequent conviction. Of these, 59 were identified as also qualifying for felony prosecution under the proposal.

Under existing *Code* (§ 18.2-67.5:1), a third or subsequent conviction for any of the specified misdemeanor sex offenses, such as indecent exposure, is a Class 6 felony. According to FY2005 to FY2009 Circuit Court Automated Information System (CAIS) data, 50% of offenders convicted of a felony for a third or subsequent indecent exposure (as the primary, or most serious, offense) were given a state-responsible (prison) term. The median sentence in these cases was 1.5 years.

Impact of Proposed Legislation:

State adult correctional facilities. By raising the penalty for a third prostitution conviction from a misdemeanor to a felony, the proposal is expected to increase the need for state-responsible (prison)

beds. The impact is estimated to be 24 beds by 2016. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$660,210.

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

FY11	FY12	FY13	FY14	FY15	FY16
13	22	23	24	24	24

Local adult correctional facilities. The projection of jail bed space need includes offsetting elements. Due to the requirement that a term of confinement in jail be served for any subsequent prostitution conviction, local-responsible (jail) bed space needs would be expected to increase. However, because some offenders would receive a prison sentence instead of a jail sentence, the proposal is also expected to decrease jail bed space needs as well. The net impact is estimated to be a reduction of nine beds statewide, for a savings to the state of \$101,275 and \$111,863 to the localities.

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

FY11	FY12	FY13	FY14	FY15	FY16
-5	-8	-9	-9	-9	-9

Adult community corrections resources. Raising a crime from a Class 1 misdemeanor to a Class 6 felony may decrease the demand for local community-based probation services and increase the need for state community corrections resources. The *Code of Virginia*, however, allows judges to utilize local community-based probation programs for Class 5 and Class 6 felons as well as misdemeanants. The net impact of the proposal on local versus state community corrections resources cannot be estimated.

Virginia's sentencing guidelines. Convictions under § 18.2-350 are not covered by the sentencing guidelines as the primary (most serious) offense in a sentencing event. However, convictions under this statute may augment the guidelines recommendation if a covered offense is the most serious at conviction. No adjustment to the guidelines would be necessary as a result of 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. According to the Department of Juvenile Justice (DJJ), 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 \$660,210 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 of Public Safety's Committee on Inmate Forecasting in 2009.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety's Committee on Inmate Forecasting and approved in 2009.

3. Cost per prison bed was assumed to be \$27,700 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 FY2008 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$29.93 per day or \$10,932 per year. The local cost was calculated by using the daily expenditure cost of \$67.99 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 \$33.06 per day or \$12,075 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, which would be effective on July 1, 2010, is phased in to account for case processing time.
2. It was assumed that prosecutors would charge all eligible offenders with the proposed felony.
3. Offenders affected by the proposal were assumed to receive sentences similar to offenders currently convicted of a Class 6 felony for a third or subsequent offense of indecent exposure.
4. The state-responsible 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, 2008. For person crimes, this rate was 11.8%.

prostitution01_1184