



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1898

(Patron – Hugo)

LD #: 11103525

Date: 1/5/2011

Topic: Abduction of minors for sexual purposes

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 874 of the 2010 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends and reenacts §§ 18.2-47, 18.2-48, 18.2-49, 18.2-67.7 and 18.2-382 of the *Code of Virginia* relating to abduction of minors for sexual purposes. Under the proposal, the definition of abduction in § 18.2-47 is expanded to include instances in which someone 1) recruits, entices, or harbors another person with the intent to subject him to forced labor or services or 2) seizes, takes, transports, etc., a minor for purposes of prostitution, pornography or sexual performance by the minor. The proposal would also expand the applicability of the Class 2 felony under § 18.2-48(iii) making it illegal to abduct any minor, regardless of age, for the purpose of concubinage, prostitution, pornography or sexual performance. Currently, the Class 2 felony only applies to victims under sixteen years of age. Under the proposal, a lack of knowledge of the victim's age, consent of the minor to the sexual act, and the general reputation or character of the victim shall not be considered defenses.

Furthermore, the proposal expands § 18.2-49, which defines penalties for threatening, assisting, or aiding in the abduction of a female under the age of 16, to include acts involving any minor, regardless of gender. Finally, the proposal states that under § 18.2-382, a minor cannot consent to photographing, modeling, or acting in the preparation of any obscene film, photograph, etc., and that use of the minor in preparing such materials is a crime of abduction for purposes of prostitution pursuant to the proposed amendments under §§ 18.2-47(B) and 18.2-48(iii).

Analysis:

According to Sentencing Guidelines data for fiscal year (FY) 2009 and FY2010, 188 offenders were convicted under § 18.2-47(A) for abduction by force without justification (as the primary, or most serious, offense). The majority (61%) of these offenders received a state-responsible (prison) term, for which the median sentence was three years. Another 22% were given a local-responsible (jail) term with a median sentence of six months. The remaining 17% were not given an active term of

incarceration to serve. According to the Circuit Court Automated Information System (CAIS) for FY2009 and FY2010, there were no convictions during the time period for abduction with intent to subject an individual to forced labor or services under the existing § 18.2-47(B).

FY2009 and FY2010 Sentencing Guidelines data reveal two cases in which an offender was convicted under § 18.2-48(iii) for abducting a child under 16 years of age for immoral purposes (as the primary offense). Both defendants received active prison sentences of 4 years and 20 years, respectively. Sentencing Guidelines data for the same time period show no convictions for threatening, assisting or aiding in abduction as defined in § 18.2-49.

According to the FY2009 and FY2010 General District Court Automated Information System (CAIS) database, two offenders were sentenced for obscene photography, modeling, filming, etc., during this time period as the primary, or most serious, offense. The offenders received fines only, as the crime is currently punishable as a Class 3 misdemeanor with a maximum fine of \$500.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of existing felonies, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. The number of additional felony convictions that may result from the proposal cannot be estimated; therefore, the magnitude of the impact cannot be determined.

Local adult correctional facilities. The proposal may also increase local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for state community corrections resources. Since the number of cases that may be affected by the proposal cannot be estimated, the potential impact on community corrections cannot be quantified.

Virginia's sentencing guidelines. Felony convictions under §§ 18.2-47(A), 18.2-48, and 18.2-49 are covered by the sentencing guidelines. The guidelines do not cover convictions under §§ 18.2-47(B) or 18.2-382 when these crimes are the primary (or most serious) offense in a case; however, a conviction under this section (as an additional offense) 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 of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

Juvenile detention facilities. According to the Department of Juvenile Justice (DJJ), the effect of the proposal 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; therefore, Chapter 874 of the 2010 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.