



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1954

(Patron – Villanueva)

LD #: 11101080

Date: 12/8/2010

Topic: Libraries, museums & performances in relation to child pornography

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Programs:**
None (\$0)

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

Summary of Proposed Legislation:

The proposal amends § 18.2-383 of the *Code of Virginia* to modify the current exemption in the obscenity statutes that applies to libraries, museums, schools, and theaters supported by public appropriation. The current statute states that nothing contained in the obscenity article of the *Code of Virginia* is to be construed to apply to the purchase, distribution, loan, exhibition, or performance of any work by a publically-supported library, museum, school, or theater. Under the proposal, acts defined in §§ 18.2-374.1 (production of child pornography), 18.2-374.1:1 (possession, reproduction, or distribution of child pornography), and 18.2-374.3 (solicitation of a minor via the internet or other communications system) would not be included in the exemption. Thus, the provisions set out in these statutes would apply to the purchase, distribution, loan, exhibition, or performance of works by a publically-supported libraries, museums, schools, or theaters.

Analysis:

According to the Sentencing Guidelines Database (SG) for fiscal year (FY) 2009 and FY2010, 158 offenders were convicted of producing, reproducing, or distributing child pornography (in violation of §§ 18.2-374.1 or 18.2-374.1:1) or soliciting a minor via the internet (in violation of § 18.2-374.3). In these cases, one of these crimes was the primary (or most serious) offense at sentencing. Overall, 15% of these offenders received probation without an active term of incarceration, 18% received a local-responsible (jail) term with a median term of 6.0 months, and 67% received a state-responsible (prison) term with a median sentence of 5.0 years.

During the same two-year period, 74 offenders were convicted under § 18.2-374.1:1 for possessing child pornography (as the primary offense). Of these, 31% received probation without an active incarceration term to serve, 24% received a local-responsible (jail) term with a median sentence of 3.0 months, and 45% received a state-responsible (prison) term with a median sentence of 3.0 years.

Impact of Proposed Legislation:

State adult correctional facilities. The nature and institutional oversight of the entities listed in § 18.2-383 (all supported by public appropriation) are such that a knowing or willing violation of §§ 18.2-374.1, 18.2-374.1:1, or 18.2-374.3 would be unlikely. Therefore, the proposal is not expected to impact the state-responsible (prison) bed space needs of the Commonwealth.

Local adult correctional facilities. The proposal is not expected to impact the local-responsible (jail) bed space needs of the Commonwealth.

Adult community corrections programs. The proposal is not expected to impact adult community corrections resources.

Virginia's sentencing guidelines. Convictions under §§ 18.2-374.1, 18.2-374.1:1, and 18.2-374.3 are covered by the sentencing guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the effect of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's 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 is \$0 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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