



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 826

#### *Amendment in the Nature of a Substitute (Patron Prior to Substitute – Edwards)*

LD #: 11104432

Date: 1/21/2011

Topic: Publication of video/still image from unlawful filming, etc.

#### 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 expands § 18.2-386.1 to make it a Class 6 felony to publish a videographic or still image record via the Internet, if it was obtained unlawfully as described in subsection A of the same statute. The proposal also expands the venue by amending § 19.2-249.2..

Currently, subsection A of § 18.2-386.1 states that it is unlawful to knowingly and intentionally videotape, photograph, or film any nonconsenting person if that person is i) totally or partially nude, ii) the videotape, etc., is created by placing the lens 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, or iii) the person being videotaped, etc., would have reasonable expectation of privacy. This offense is punishable as a Class 1 misdemeanor or, if the victim is under the age of 18, a Class 6 felony. A third or subsequent offense under § 18.2-386.1 within 10 years (each offense having occurred on a different date and the offender having been at liberty in between each conviction) is a Class 6 felony.

Subsection (ii) of § 18.2-386.1(A), capturing an image from beneath or between a person's legs, was added to the *Code* in 2005. The Class 6 felony for a third or subsequent offense (§ 18.2-386.1(E)) was added in 2008.

#### Analysis:

According to the Local Inmate Data System (LIDS) for fiscal years 2009 and 2010, 14 offenders held pre- or post-trial in jail were convicted of a misdemeanor violation of § 18.2-386.1 as the primary, or most serious, offense. The median local-responsible (jail) sentence was six months.

According to the Circuit Court Automated Information System (CAIS) for fiscal years 2009 and 2010, there were no offenders convicted of a felony under § 18.2-386.1 for a third or subsequent offense;

however, the felony provision did not take effect until the beginning of FY2009.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By creating a new Class 6 felony offense, the proposal could increase the state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not provide sufficient detail to estimate the number of additional felony convictions likely to result from enactment of the proposal. Therefore, the impact of the proposal cannot be determined.

**Local adult correctional facilities.** The proposal may 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 adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

**Virginia's sentencing guidelines.** Convictions under § 18.2-386.1 are not covered by the sentencing guidelines as the primary (most serious) offense. Conviction for such an offense, however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the 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.

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**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.**

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