



## Fiscal Impact Statement for Proposed Legislation

*Virginia Criminal Sentencing Commission*

### House Bill No. 1271

*Amendment in the Nature of a Substitute  
(Patron Prior to Substitute – Jones, S.C.)*

**LD#:** 12105221

**Date:** 2/8/2012

**Topic:** Penalties for certain sex crimes

#### 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:**  
None (\$0)
- **Juvenile Detention Facilities:**  
None (\$0)

\* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 890 of the 2011 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

#### Summary of Proposed Legislation:

The proposed legislation amends §§ 18.2-61 (Rape), 18.2-67.1 (Forcible Sodomy), and 18.2-67.2 (Object Sexual Penetration), relating to penalties for certain sex crimes. The proposal seeks to impose a mandatory minimum sentence of life imprisonment when these crimes are committed against a victim under the age of 13, and it is alleged in the indictment that the offender was 18 years of age or older at the time of the offense. If it is alleged in the indictment that the offender was younger than 18 years of age at the time of the offense and more than three years older than the victim, the proposed mandatory minimum sentence is 25 years imprisonment. If the offender was younger than 18 years of age and not more than three years older than the victim, no mandatory minimum sentence applies. The offense need not be the offender's second or subsequent violent felony sexual assault conviction for the mandatory life sentence to apply; therefore, § 18.2-67.5:3 is modified accordingly. The proposal also modifies § 19.2-303 to remove the option of post-release supervision with electronic monitoring for these offenders.

The proposal amends § 19.2-169.3 so that “unrestorably incompetent” defendants charged with a sexually violent offense would be reviewed for commitment pursuant to procedures set forth in §§ 37.2-903 and 37.2-904. These individuals would then be assessed similarly to those eligible for civil commitment under Chapter 9 of Title 37.2. The local Commonwealth’s attorney and the Commissioner of Behavioral Health and Developmental Services would be charged with providing any information relevant to the review to the Director of the Department of Corrections (DOC).

The proposal also amends §§ 37.2-903 and 37.2-904 to specify a protocol for reviewing unrestorably incompetent defendants for possible commitment. Currently, the Director reviews DOC’s database of sexually violent prisoners monthly, identifying offenders scheduled for release from prison within 10 months with a qualifying score of four or more on the Static-99 scale or on a similar risk assessment tool. Under the amended § 37.2-903, the Commissioner shall forward to the Director the records of all

defendants charged with a sexually violent offense, found unrestrictably incompetent to stand trial, and ordered to be screened pursuant to § 19.2-169.3. The Director, applying the procedures described in subsection B of § 37.2-903, shall identify those defendants who shall be referred to the Commitment Review Committee (CRC) and shall then forward their information to the CRC for assessment. The Director may exclude from referral prisoners who are so incapacitated by a permanent and debilitating medical condition or a terminal illness so as to represent no threat to public safety. Under the amended § 37.2-904, the CRC would then have 180 days to make its recommendation for possible commitment to the Attorney General; currently, the CRC has 120 days to make its decision.

Currently, felony sexual assaults under §§ 18.2-61, 18.2-67.1, and 18.2-67.2 are generally punishable by a term of imprisonment from five years to life. The 2006 General Assembly, however, added a mandatory minimum sentence of 25 years, which applies to offenses involving a victim younger than 13 years of age committed in conjunction with a kidnapping, burglary, or malicious wounding. If an offender is convicted under § 18.2-67.5:3 of a second or subsequent violent felony sexual assault, a mandatory life sentence applies.

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#### **Analysis:**

According to FY2010 and FY2011 Sentencing Guidelines (SG) data, a felony conviction for rape, forcible sodomy, or object sexual penetration involving a victim under the age of 13 was the primary (or most serious) offense in 228 sentencing events. Of the total, there were three cases involving juvenile offenders who may have been less than three years older than the victim and, therefore, would not have been subject to one of the proposed mandatory minimums. Nearly all the offenders (94%) were sentenced to a state-responsible (prison) term. Ten of 215 prison commitments were sentenced to life imprisonment; for the remaining offenders sentenced to prison, the median sentence was 13 years. Six offenders (3%) received local-responsible (jail) terms with a median sentence of five months. The remaining offenders (3%) were sentenced to probation without an active term of incarceration.

According to FY2010 and FY2011 Circuit Court Automated Information System (CAIS) data, there was one possible case of object sexual penetration committed against a victim younger than 13 years of age in conjunction with a kidnapping, burglary, or malicious wounding. This offender was convicted of three counts and sentenced to 25 years imprisonment.

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#### **Impact of Proposed Legislation:**

**State adult correctional facilities.** By creating new mandatory minimum sentences, the proposal is expected to have an impact on the future state-responsible (prison) bed space needs of the Commonwealth. The number of cases in which the offender's age at the time of the offense is alleged in the indictment, however, cannot be estimated; therefore, the magnitude of the impact cannot be determined.

**Local adult correctional facilities.** The proposal is expected to decrease local-responsible (jail) bed space needs, as some offenders who otherwise would receive local-responsible (jail) terms will, under the proposal, receive state-responsible (prison) sentences; however, the magnitude of the impact cannot be determined.

**Adult community corrections resources.** The proposal is not expected to increase the need for community corrections resources and will likely delay or eliminate the need for services for some offenders affected by the proposal, as they will be staying in prison longer.

**Virginia's sentencing guidelines.** The guidelines do not cover felony sexual assaults against a victim younger than 13 years of age committed in conjunction with a kidnapping, burglary, or malicious

wounding when the offense is the primary (or most serious) offense in the case; however, such a conviction may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. The remaining felony sex offenses affected by the proposal 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 proposal is not expected to increase juvenile correctional center (JCC) bed space needs.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

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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 890 of the 2011 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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

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