



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 20 **(Patron – Stuart)**

LD #: 12100895

Date: 12/21/2011

Topic: Rape accomplished by ruse

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 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 proposal expands the definition of rape in § 18.2-61 to include sexual intercourse achieved by means of a ruse or trickery.

Currently, the statute defines rape as sexual intercourse with a complaining witness accomplished 1) against the complaining witness's will by force, threat, or intimidation, 2) through the use of the complaining witness's mental incapacity or physical helplessness, or 3) with a child under the age of 13. This offense is punishable by imprisonment of five years to life. A mandatory minimum of 25 years applies when the victim is less than age 13, the offender is more than three years older, and the offense was committed in conjunction with a burglary, kidnapping, or malicious wounding.

Analysis:

According to fiscal year (FY) 2010 and FY2011 Sentencing Guidelines (SG) data, there were 182 offenders convicted under § 18.2-61 for a completed act of rape (as the primary, or most serious, offense). Nearly all (172 of the 182 offenders, or 95%) of the offenders were given a state-responsible (prison) term. Of the offenders receiving a prison term, approximately 8% received a life sentence to serve, while the remaining offenders were given sentences with a median of 15 years to serve in prison.

Data are insufficient to determine the number of incidents involving intercourse achieved by means of a ruse or trickery that would not be covered by the current provision.

Regarding the Department of Juvenile Justice (DJJ), Court Service Units serve as the point of entry into the juvenile justice system. An "intake" occurs when a juvenile is brought before a court service unit officer for one or more alleged law violations. The DJJ reports an average of almost 90 intake petitions per year for the three most recent fiscal years (FY2009 to FY2011) for a violation of § 18.2-61 of the *Code of Virginia* allegedly committed by a person under the age of 18. During the same three-year

period, the DJJ also reports averaging just over 12 commitments to juvenile correctional centers per year for a violation of § 18.2-61 of the *Code of Virginia*. The number of instances involving offenses accomplished by a “ruse” or “trickery” is not known.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal expands the applicability of an existing felony. In this way, the proposal could increase the state-responsible (prison) bed space needs of the Commonwealth. The number of additional felony convictions that may result from the proposal, and the net effect on sentences for those offenders, 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 additional felony convictions and subsequent supervision requirements for those offenders, the proposal may affect adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections programs cannot be quantified.

Virginia’s sentencing guidelines. Convictions under § 18.2-61 are covered by the sentencing guidelines as the primary (most serious) offense. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. It is possible that a person under the age of 18 could accomplish the offense under § 18.2-61 by ruse or trickery. In such an event, an adjudication for a felony in juvenile and domestic relations district court would make that person eligible for commitment to a juvenile correctional center pursuant to subsection (A)(14) of § 16.1-278.8 of the *Code of Virginia*. Therefore, the DJJ reports that the legislative proposal may have an impact on juvenile correctional center bed space needs. However, the actual impact on juvenile correctional center bed space needs cannot be determined.

Juvenile detention facilities. It is possible that a person under the age of 18 could accomplish the offense under § 18.2-61 by ruse or trickery. In such an event, the person could be subject to pre-trial detention in a juvenile detention facility pursuant to § 16.1-248.1. According to the DJJ, while the legislative proposal may have an impact on juvenile detention bed space needs, the actual impact on juvenile detention bed space needs 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 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.