



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 23 **(Patron – Stuart)**

LD #: 12102095

Date: 12/19/2011

Topic: Adultery or fornication by parent or grandparent

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 proposal amends § 18.2-366, relating to adultery or fornication with a child or grandchild by a parent or grandparent. Currently, adultery and fornication by persons forbidden to marry and incest are punishable under § 18.2-366 as either a felony or a misdemeanor. If the adultery or fornication is committed by those forbidden to marry, the offense is punishable as a Class 1 misdemeanor. If the victim is the offender's daughter, granddaughter, son, grandson, father, or mother, the offense is a Class 5 felony. However, if a parent or grandparent commits adultery or fornication with their child or grandchild, age 13 to 17, the offense is punishable as a Class 3 felony. The proposal expands the Class 3 felony to include fornication with a child or grandchild who is younger than 13 years old. Currently, under § 18.2-61, sexual intercourse with a child younger than 13 years old, regardless of the relationship between the victim and offender, is punishable by imprisonment of five years to life.

By expanding § 18.2-366(B) to include victims under the age of 13, the proposal creates an explicit overlap between sexual intercourse with a child younger than 13 (§ 18.2-61), punishable by a maximum term of life imprisonment, and sexual intercourse with a child/grandchild under 13 by a parent/grandparent, with a proposed statutory maximum term of 20 years imprisonment. Currently, the higher penalty specified in § 18.2-366 only applies if the victim is between the ages of 13 and 17; otherwise, under § 18.2-366, the offender is guilty of the Class 5 felony. If the incest charge is designed to complement the rape offense established under § 18.2-61 and the prohibition against multiple charges and punishments for the same act under the Double Jeopardy Clauses of the federal and state constitutions and § 19.2-294 does not apply, parents and grandparents who have sexual intercourse with their child or grandchild under the age of 13 may currently be convicted of a Class 5 felony, under § 18.2-366(B), in addition to rape.

Analysis:

According to Sentencing Guidelines data for fiscal year (FY) 2010 and FY2011, eight offenders were convicted of a Class 5 felony under § 18.2-366(B) for committing adultery or fornication with their child, grandchild, father, or mother. The incest was the primary (or most serious) offense in five of the eight cases. Of these five offenders, four were sentenced to state-responsible (prison) terms; one offender did not receive an active term of incarceration to serve after sentencing. The median sentence for offenders who received a prison term was 5.5 years.

A total of 10 offenders were convicted of a Class 3 felony under § 18.2-366(B) for incest with a child between the ages of 13 and 17. The incest was the primary offense in five of these cases. One of these offenders received a local-responsible (jail) term of three months. The remaining four offenders received a state-responsible prison term, for which the median sentence length was 3.9 years.

Under § 18.2-61, sexual intercourse with a child younger than 13 years old, regardless of the relationship between the victim and offender, is punishable by life imprisonment. Of the eight offenders who were convicted of a Class 5 felony under § 18.2-366(B), two were also convicted of rape of a child less than 13 that occurred on the same offense date as the incest charge.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal expands the Class 3 felony established in § 18.2-366(B) to include sexual intercourse occurring between a parent or grandparent and their child or grandchild who is younger than 13 years of age. If convicting a defendant of both the incest charge and rape of a child younger than 13 is not prohibited by the Double Jeopardy Clauses of the federal and state constitutions and § 19.2-294, the proposal essentially increases the penalty for intercourse between a parent/grandparent and a child/grandchild younger than 13 from a Class 5 felony to a Class 3 felony.

By increasing a felony with a statutory maximum of 10 years to a felony with a statutory maximum of 20 years, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, data are not sufficiently detailed to identify how many offenders convicted of a Class 5 felony for incest committed the offense against a child younger than 13 years old. Therefore, the magnitude of the impact cannot be quantified.

Local adult correctional facilities. Similarly, the proposal's impact on the local-responsible (jail) bed space needs of the Commonwealth cannot be determined.

Adult community corrections programs. The net impact of the proposal on community corrections resources cannot be determined.

Virginia's sentencing guidelines. Felony convictions under § 18.2-366 are covered by the sentencing guidelines as the primary (most serious) offense in a case. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice, the proposal is not expected to increase juvenile correctional center 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.

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.

incest02_2095