



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 21

(Patron – Stuart)

LD #: 12102101

Date: 12/21/2011

Topic: Rape accomplished by coercion

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 explicitly include sexual intercourse achieved by means of coercion. 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.

In 1985, the Supreme Court of Virginia defined the terms threat and intimidation, as used in § 18.2-61, in *Sutton v. Commonwealth*. Specifically, the Court stated that threat refers to the "expression of an intention to do bodily harm," while intimidation means "putting a victim in fear of bodily harm by exercising such domination and control of her as to overcome her mind and overbear her will. Intimidation may be caused by the imposition of psychological pressure on one who, under the circumstances, is vulnerable and susceptible to such pressure" (*Sutton v. Commonwealth*, 1985). The Court cites the definition of intimidation provided by Black's Law Dictionary as "unlawful coercion; extortion; duress; putting in fear." If coercion is determined to contain elements that are separate from force, threat, and intimidation, as currently contained in § 18.2-61, the addition of coercion to § 18.2-61 would expand the offense of rape to include additional circumstances beyond what is currently within the purview of this section.

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 coercion 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. The number of instances involving committing the offenses by coercion is not known.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal expands the definition of rape under § 18.2-61 to explicitly include sexual intercourse accomplished by coercion. If coercion is determined to contain elements that are separate from force, threat, and intimidation, the proposal could increase the state-responsible (prison) bed space needs of the Commonwealth. Data are not sufficiently detailed to identify the number of individuals who accomplish sexual intercourse via coercion that would not already be subject to the provisions of § 18.2-61. 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. 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 coercion. 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 coercion. In such an event, the person could be subject to pre-trial detention in a juvenile detention facility pursuant to § 16.1-248.1 of the *Code of Virginia*. 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.

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