



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 668 *(Patron – Garrett)*

LD #: 12103750

Date: 01/09/2012

Topic: Punishment for third misdemeanor sex offense

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 amends § 18.2-67.5:1, to include not only previous Virginia convictions for attempted sexual battery, sexual battery, consensual intercourse with a child, indecent exposure, and peeping, but federal convictions, convictions in another state or territory of the United States or convictions in the District of Columbia for similar offenses. Currently, § 18.2-67.5:1 refers only to two or more convictions, on different dates, for offenses specified in this section. There is no reference to convictions for similar offenses outside of Virginia. Under the proposal, the penalty for a third misdemeanor conviction, when alleged in the warrant, information or indictment, remains a Class 6 felony.

Analysis:

Section 18.2-67.5:1 states that offenders who are convicted of a third or subsequent offense for certain misdemeanor sex crimes, including attempted sexual battery, sexual battery, consensual intercourse with a child, indecent exposure, and peeping, can be charged with a Class 6 felony. By expanding prior convictions to include similar offenses outside of Virginia, the proposal may increase the number of offenders convicted of a felony for a third or subsequent misdemeanor offense under § 18.2-67.5:1. According to FY2010 and FY2011 data from the Circuit Court Automated Information System (CAIS), a felony violation of § 18.2-67.5:1 was the primary (or most serious) offense in 20 sentencing events during this time period. Of these offenders, one was sentenced to probation without an active term of incarceration and 30% received a local-responsible (jail) term, with a median sentence of 8.0 months. The remaining 65% of offenders received a state-responsible (prison) term, with a median sentence of 3.0 years.

Impact of Proposed Legislation:

State adult correctional facilities. Since the proposal expands prior convictions to include similar convictions in jurisdictions outside Virginia, the proposal may increase the number of offenders convicted of a felony for a third or subsequent misdemeanor sexual offense under § 18.2-67.5:1. As a result, the proposal could increase the future state-responsible (prison) bed space needs of the Commonwealth. However, data are not sufficiently detailed to estimate how many additional felony convictions may result if the proposal is enacted. Therefore, the magnitude of the impact cannot be quantified.

Local adult correctional facilities. Similarly, the magnitude of the impact on local-responsible (jail) bed space needs cannot be quantified.

Adult community corrections resources. Because the proposal could result in additional 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. Felony convictions under § 18.2-67.5:1 are not covered by the sentencing guidelines as the primary (most serious) offense in a case; however, a conviction under this provision may 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. Although a juvenile may be subjected to the proposed amendments, 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. Although a juvenile may be subjected to the proposed amendments, the Department of Juvenile Justice reports that the effect of the proposal on the bed space needs of juvenile detention facilities 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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