



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 832

Amendment in the Nature of a Substitute (Patron Prior to Substitute – Stuart)

LD#: 13104325

Date: 1/22/2013

Topic: Mandatory minimum sentences to be served consecutively

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Programs:**
None (\$0)

- **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 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends § 18.2-374.1:1 of the *Code of Virginia*, relating to mandatory minimum sentences for certain child pornography offenses. Currently, under subsection C of § 18.2-374.1:1, any person who (i) reproduces, transmits, sells, or distributes child pornography or (ii) solicits child pornography in order to gain entry into a group engaged in trading or sharing child pornography is guilty of a felony punishable by imprisonment from five to twenty years; in addition, a second or subsequent offense carries a five-year mandatory term. The proposal specifies that these mandatory minimum terms must be made to run consecutively with any other sentence received.

Since the proposal is specific to convictions under § 18.2-374.1:1, it would not affect sentencing for other child pornography cases carrying mandatory minimum terms, such as production of child pornography by an offender seven or more years older than the victim under § 18.2-374.1(B,1).

Analysis:

According to the Sentencing Guidelines database for fiscal years (FY) 2008 through FY2012, 13 offenders were convicted of a second or subsequent violation of § 18.2-374.1:1(C). Of these, four offenders received a sentence below the total amount of time that the offender would have received if the mandatory minimum terms were run consecutively. In each case, the second or subsequent violation of § 18.2-374.1:1(C) was the primary, or most serious, offense at sentencing. All of these offenders were sentenced to state-responsible (prison) terms that ranged from 10 to 20 years. The median increase in sentence length if the mandatory minimum terms were run consecutively for these offenders was 12.5 years.

Solicitation of child pornography to gain entry into a group was added to § 18.2-374.1:1 of the *Code* by the 2012 General Assembly. Therefore, no convictions for this offense could be observed in the databases available to the Commission.

Impact of Proposed Legislation:

State adult correctional facilities. By requiring that the mandatory minimum terms specified in § 18.2-374.1:1(C) must run consecutively with any other sentence received, the proposal is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. Since the penalty for solicitation of child pornography to gain entry into a group became effective on July 1, 2013, existing databases do not yet contain information regarding the sentencing of offenders under this portion of § 18.2-374.1:1(C). As a result, this portion of the impact could not be estimated. In addition, existing databases do not contain sufficient information to determine if offenses carrying a mandatory minimum term were run concurrently with offenses that do not carry a mandatory minimum. The impact of this portion of the proposal on state-responsible (prison) bed space needs also could not be estimated.

Cases where offenders received a sentence that was lower than the sum of mandatory minimum terms for the reproduction, etc., of child pornography could be identified. All four of the offenders sentenced under § 18.2-374.1:1(C) between FY2008 and FY2012 whose effective sentences fell below the sum of the mandatory minimum sentences received a prison term of at least ten years. As a result, any increase that would impact these offenders is expected to occur outside the six-year forecast window.

Local adult correctional facilities. Since the mandatory minimum terms specified in § 18.2-374.1:1(C) must be served in state correctional facilities, the proposal is not expected to impact the need for local-responsible (jail) beds.

Adult community corrections resources. The proposal is not expected to increase the need for community corrections resources and will likely delay the need for services for some offenders affected by the proposal, as they will stay in prison longer prior to being released to the community.

Virginia's sentencing guidelines. Violations involving the reproduction, transmission, sale, or distribution of child pornography under § 18.2-374.1:1(C) are covered by the sentencing guidelines as the primary, or most serious, offense. Solicitation of child pornography to gain entry into a group is not covered, but may augment the guidelines recommendation if the most serious offense at sentencing is covered. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. The Department of Juvenile Justice reports that, while this proposal could cause an increase in commitments, the impact of this proposal on bed space needs for juvenile correctional centers cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that this proposal's impact on detention center bed space 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 3 of the Acts of Assembly of 2012, Special Session I, 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.