

## Fiscal Impact Review 2015 General Assembly Session

**Bill number:** HB 1533

**Review Requested By:** Chairman Albo

### JLARC Staff Fiscal Estimates

HB 1533 would add the act of engaging in an obscene sexual display to the list of misdemeanor sex offenses in §18.2-67.5:1 for which a third offense within 10 years is a Class 6 felony. JLARC staff generally agree with the costs to state adult correctional facilities estimated by the Virginia Criminal Sentencing Commission for the Fiscal Impact Statement (FIS) for HB 1533. However, the FIS does not reflect temporary savings that could occur at the Virginia Center for Behavioral Rehabilitation (VCBR) as a result of the proposed change in law.

JLARC staff found that cost savings at VCBR would likely occur because some VCBR residents would serve longer felony sentences rather than misdemeanor sentences for future sex offenses committed while in the facility. VCBR would realize a cost savings for each additional day that a resident is housed at an adult correctional facility rather than in VCBR. The cost savings at VCBR would likely be equal to or greater than the additional costs experienced by adult correctional facilities from FY 2017 to FY 2020. However, the cost savings at VCBR would be temporary, the savings would no longer be greater than the increased expenses at adult correctional facilities by FY 2021, and the savings would phase out completely by FY 2024.

*An explanation of the JLARC staff review is included on the pages that follow.*

**Authorized for release:**



**Hal E. Greer, Director**

**Bill summary:** HB 1533 would add the act of engaging in an obscene sexual display (in violation of §18.2-387.1), to the list of misdemeanor sex offenses in §18.2-67.5:1 for which a third offense within 10 years is a Class 6 felony.

**Discussion of fiscal implications:** The Virginia Criminal Sentencing Commission (VCSC) fiscal impact statement (FIS) for HB 1533 found that adding the offense of obscene sexual display to the list of sex offenses in §18.2-67.5:1 would culminate in an increase of seven state responsible prison beds at an annual cost of at least \$207,232 by FY 2021. VCSC impact statements report the highest projected annual cost over the next six fiscal years.

The VCSC estimate of the fiscal impact on adult correctional facilities is based upon 138 offenders that have been convicted of an obscene sexual display in the past two years. For nine of these offenders, the conviction of obscene sexual display would represent a third misdemeanor sex offense resulting in a class 6 felony under HB 1533. JLARC staff reviewed the methodology used by VCSC to develop the estimate in the FIS and found it to be reasonable. However, the FIS does not reflect temporary savings that could occur at the Virginia Center for Behavioral Rehabilitation (VCBR).

Residents at VCBR with one or more prior convictions for obscene sexual display could experience a future felony conviction if their prior obscene sexual display(s) count as a qualifying offense under §18.2-67.5:1, as proposed by HB 1533. Upon the felony conviction, the VCBR resident is sent to an adult correctional facility. VCBR residents receiving a felony conviction serve a longer prison sentence than they otherwise would for a misdemeanor. Each additional day a VCBR resident spends at an adult correctional facility represents cost savings to VCBR because VCBR is not responsible for the individual during that time.

VCBR staff identified 15 residents who would be affected by HB 1533 (i.e. have one or more prior offense of obscene sexual display). Based on prior experience, VCBR staff estimated five of those residents might commit an obscene sexual display or other offense covered under §18.2-67.5:1 in the next year. JLARC staff estimated future offense rates for the remaining residents in this group by assuming that the same proportion of affected individuals will re-offend each following year. Using this assumption of re-offense rates and the conviction and sentencing rates from VCSC, JLARC staff estimates that the cost savings experienced at VCBR would be equal to or greater than the additional costs experienced by adult correctional facilities from FY 2017 to FY 2020.

Cost savings at VCBR resulting from HB 1533 would be temporary due to a recent change in the charging practice by staff at the facility. In 2013, VCBR security staff began

charging residents with indecent exposure under §18.2-387 instead of obscene sexual display for such acts. VCBR security staff view both charges as applicable to the same type of act in most instances, and indecent exposure (§18.2-387) is already included in §18.2-67.5:1. Therefore, while HB 1533 may streamline the prosecution and conviction process for obscene sexual display, in most cases such acts at the facility will now be prosecuted as indecent exposure and progress toward a class 6 felony.

Potential cost savings therefore are limited to the savings resulting from future convictions under §18.2-67.5:1 of the 15 individuals at VCBR who have prior convictions of obscene sexual display. With the proposed bill, their prior convictions would count toward a charge under §18.2-67.5:1. The bill would not impact the potential conviction of residents under §18.2-67.5:1 who have prior convictions other than for obscene sexual display. It would also not impact the potential conviction of residents under the felony statute for offenses committed since 2013 or in the future since prosecutors now generally charge offenders from the facility with indecent exposure.

The additional costs at adult correctional facilities resulting from HB 1533 would likely outweigh savings at VCBR beginning in FY 2021 at the latest due to the temporary nature of the cost savings at VCBR. By FY 2024, no additional cost savings will be realized at VCBR because it will have been more than 10 years since the final conviction of obscene sexual display that originated before implementation HB 1533 and the change in charging practices at VCBR.

**Budget amendment necessary?** Yes, an increase in general fund appropriations is required for the Department of Corrections (DOC), but this could be offset in the near term by a decrease in the general fund appropriation for the Department of Behavioral Health and Developmental Services (DBHDS).

**Agencies affected:** Department of Corrections, Department of Behavioral Health and Developmental Services

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