



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1056

As Engrossed

(Patron Prior to Engrossment – Howell)

LD #: 15102643

Date: 2/6/2015

Topic: Child pornography and obscenity

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 **

**Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the 2014 Acts of Assembly, 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 certain child pornography offenses. Currently, under § 18.2-374.1:1(C), it is unlawful to (i) reproduce, sell, give, distribute, electronically transmit, display with lascivious intent, purchase, or possess with intent to distribute, etc., child pornography, or to (ii) solicit child pornography in order to gain entry into a group of people engaged in trading or sharing child pornography. These offenses are punishable by not less than five nor more than 20 years imprisonment. A second or subsequent conviction under this subsection carries a mandatory minimum term of five years. The proposed legislation adds language to § 18.2-374.1:1(C) indicating that the offender must knowingly commit the offense. This makes subsection (C) consistent with subsections (A) and (B) of this statute. The proposal also removes the phrase “with lascivious intent” from the subsection, such that any knowing display of child pornography may constitute an offense, regardless of the offender’s intent.

The proposal also amends § 18.2-381 to specify the statutes covered by the felony enhancement defined therein. Currently, § 18.2-381 states that any second or subsequent conviction under §§ 18.2-374 through 18.2-379 is Class 6 felony. When § 18.2-381 was enacted, §§ 18.2-374 through 18.2-379 defined misdemeanor offenses pertaining to obscene material and performances. Over several years, however, new statutes numbered §§ 18.2-374.1:1, 18.2-374.3, 18.2-374.4 and 18.2-376.1 have been added to the *Code* and § 18.2-374.1 has been amended substantially. These new and amended provisions pertain to child pornography and many provide significant felony penalties for the offenses, particularly for repeat offenses (up to 40 years). The proposal clarifies that the Class 6 felony defined in § 18.2-381 for second or subsequent offenses applies only to §§ 18.2-374, 18.2-375, 18.2-376, 18.2-377, 18.2-378 and 18.2-379.

The proposal includes an enactment clause indicating that the provisions of the act will not become effective unless an appropriation of general funds effectuating the purposes of the act is included in the 2015 general appropriations act that becomes law.

Analysis:

According to the Sentencing Guidelines Database for fiscal year (FY) 2013 and FY2014, 43 offenders were convicted of reproducing, selling, or distributing child pornography in violation of § 18.2-374.1:1(C) as their primary (or most serious) offense. For 34 offenders, the conviction was their first under this subsection; of these, 71% received a state-responsible (prison) term with a median sentence of 5.8 years. Another 26% received a local-responsible (jail) term with a median sentence of three months. The remaining 3% did not receive an active term of incarceration to serve after sentencing. Nine additional offenders were found guilty of a second or subsequent conviction under § 18.2-374.1:1(C); all nine received a prison term, with a median sentence length of 15 years.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal could expand the applicability of an existing felony offense, since violations regarding the display of child pornography would no longer require lascivious intent. Conversely, the proposal may limit the applicability of this felony by requiring that the individual knowingly committed the act. Existing databases do not provide sufficient detail to estimate the proposal's net impact on the state-responsible (prison) bed space needs of the Commonwealth. Therefore, the impact of the proposal cannot be determined.

Local adult correctional facilities. Similarly, the proposal may affect local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

Adult community corrections programs. The proposal's impact on adult community corrections resources cannot be determined.

Virginia's sentencing guidelines. Convictions for reproduction, sale, or distribution of child pornography under § 18.2-374.1:1(C) are covered by the sentencing guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. The Department of Juvenile Justice reports that the impact of the proposal on bed space needs for juvenile correctional centers cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on detention center 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 2 of the 2014 Acts of Assembly, 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.