# Fiscal Impact Statement for Proposed Legislation

*Virginia Criminal Sentencing Commission*

## Senate Bill No. 1188

***Amendment in the Nature of a Substitute***

**(*Patrons Prior to Substitute – Obenshain and Edwards)***

**LD #:** 15105552 **Date:** 2/26/2015

**Topic:** Commercial sex trafficking

**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 adds § 18.2-357.1, relating to commercial sex trafficking, to the *Code of Virginia*. Under the proposal, any person who solicits, recruits, or otherwise attempts to cause a person to participate in prostitution with the intent that such person will later give earnings received from an act of prostitution to another would be guilty of a Class 5 felony. If the offender uses force, intimidation, or deception to recruit another for prostitution, the penalty would be increased to a Class 4 felony. Any adult who recruits a minor would be guilty of a Class 3 felony.

The proposal also increases the penalty for certain prostitution-related offenses under §§ 18.2-356 and 18.2-357. Under the proposed modifications to § 18.2-356, the penalty for procurement of persons for forced labor or services, concubinage, prostitution, or the manufacture of obscene material or child pornography would be increased from a Class 4 felony to a Class 3 felony if the offense involved a minor. Similarly, the proposal amends § 18.2-357 to make pandering involving a minor punishable as a Class 3 felony.

The proposal also expands §§ 17.1-805, 18.2-46.1, and 18.2-513 to account for the new offenses defined in the proposed § 18.2-357.1. Under the proposed modifications to § 17.1-805(C), any violation of § 18.2-357.1 would be classified as a violent offense for the purposes of the sentencing guidelines. Offenders with prior convictions for violent felony offenses listed in subsection C of § 17.1-805 receive "enhancements" on the guidelines that increase the recommended sentences for those offenders. The proposed amendments to § 18.2-46.1 would expand the definition of a "predicate criminal act" associated with gang activity to include violations of § 18.2-357.1. This change could affect a number of gang-related felony offenses defined in the *Code of Virginia*. The proposed modifications to § 18.2-513 would

broaden the definition of "racketeering activity" under the Virginia Racketeer Influenced and Corrupt Organization (RICO) Act to include recruitment of persons for prostitution under § 18.2-357.1. Violations of the RICO Act range from offenses punishable as Class 6 felonies to crimes carrying a statutory maximum penalty of life imprisonment.

Finally, the proposal amends § 9.1-902 to require offenders convicted of violations of the proposed § 18.2-357.1 involving minors to register with the Sex Offender and Crimes Against Minors Registry. Under § 18.2-472.1, the first Registry violation committed by an offender who is not defined as sexually violent is punishable as a Class 1 misdemeanor; a second or subsequent Registry violation is a Class 6 felony. The first Registry violation committed by a sexually violent offender is punishable as a Class 6 felony; a second or subsequent Registry violation is a Class 5 felony.

**Analysis:**

According to Sentencing Guidelines data for fiscal year (FY) 2010 through FY2014, 12 offenders were convicted of a felony for receiving money for procuring a person to engage in an unlawful sexual act in violation of § 18.2-356(i). This offense was the primary, or most serious, offense in nine of the cases. Over half (55.6%) of these offenders received local-responsible (jail) terms, with a median sentence length of four months. While two offenders did not receive an active term of incarceration to serve after sentencing, the remaining two offenders were sentenced to a state-responsible (prison) term of 1.5 years. The Circuit Court Case Management System (CMS) indicates that one offender was convicted of a felony for receiving money for procuring a person to engage in prostitution during this time period. This offender received a local-responsible (jail) term of seven days. No convictions relating to forced labor, concubinage, or manufacture of obscene material or child pornography under § 18.2-356(ii) were identified in Circuit Court Case CMS data for the same time period.

Sentencing Guidelines data for FY2010 through FY2014 also indicate that a felony conviction for pandering under § 18.2-357 was the primary, or most serious, offense in 46 cases during this time period. Of these, 41.3% were sentenced to jail with a median sentence of three months. Another 15.2% received prison terms with a median sentence of approximately one year. The remaining 43.5% of offenders did not receive an active term of incarceration to serve after sentencing.

Existing data sources do not contain sufficient detail to identify instances in which an individual was convicted of a felony under §§ 18.2-356 or 18.2-357 for an offense involving a minor.

**Impact of Proposed Legislation:**

**State adult correctional facilities.** By adding new felony offenses relating to the recruitment of persons for prostitution, increasing the penalties for existing felonies in certain cases, and expanding the applicability of particular felony offenses, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing data do not provide sufficient detail to estimate the number of new felony convictions, or potentially longer sentences, that would result from enactment of the proposal. Therefore, the impact on prison bed space needs cannot be determined.

**Local adult correctional facilities.** Similarly, the proposal may also increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be determined.

**Adult community corrections programs.** Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may affect 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.** As new felonies, convictions under the proposed modifications to the *Code* would not be covered under the sentencing guidelines as the primary (most serious) offense in a case. However, a conviction under these provisions can 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.** According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

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**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.**

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