



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1317 Amendment in the Nature of a Substitute (Patron Prior to Substitute – Cline)

LD#: 16105717

Date: 2/22/2016

Topic: Aggravated sexual battery

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 665 of the 2015 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 § 18.2-67.3, relating to aggravated sexual battery.

Currently, under § 18.2-67.3, aggravated sexual battery is a felony punishable by imprisonment for a term of not less than one nor more than 20 years and a fine of not more than \$100,000. Aggravated sexual battery is defined by § 18.2-67.3 as the sexual abuse of a complaining witness where 1) the complaining witness is less than 13 years of age, 2) the act is accomplished through the use of the complaining witness's mental incapacity or physical helplessness, or 3) the offense is committed by a parent, step-parent, grandparent, or step-grandparent and the complaining witness is at least 13 but less than 18 years old.

Aggravated sexual battery also includes instances where the act is accomplished against the will of the complaining witness by force, threat or intimidation and 1) the victim is at least 13 but less than 15 years of age, 2) the offender causes serious bodily or mental injury, or 3) the offender uses or threatens to use a dangerous weapon. The proposal would expand the applicability of this provision to include instances in which the offense was accomplished against the will of the complaining witness by ruse. As a result, the proposal may serve to elevate a subset of convictions for the existing Class 1 misdemeanor under § 18.2-67.4:2, relating to adults who commit an act of sexual abuse with any 13 or 14 year old child with lascivious intent, to a Class 6 felony if the offense is committed against the will of the victim. In addition, the proposal would expand aggravated sexual battery to include additional circumstances, regardless of the victim's age. For instance, under the proposal, sexual abuse of a complaining witness would be a Class 6 felony if the accused accomplishes the act by ruse and causes mental injury.

Analysis:

Existing data sources do not contain sufficient detail to estimate the number of cases that may be affected by the proposal. However, individuals convicted of a felony under the proposed modifications to § 18.2-67.3 may be sentenced similarly to those convicted under the existing provisions of § 18.2-67.3(A,4) for aggravated sexual battery through force, threat, or intimidation.

According to the Sentencing Guidelines database for fiscal year (FY) 2014 and 2015, 61 offenders were convicted of a Class 6 felony under § 18.2-67.3(A,4) for aggravated sexual battery involving force, etc. This offense was the primary, or most serious, offense in 54 of the cases. The majority of these offenders (83.3%) received a state-responsible (prison) term, with a median sentence length of four years. While 11.1% did not receive an active term of incarceration to serve after sentencing, the remaining 5.6% received a local-responsible (jail) term, with a median length of six months.

During FY2014 and FY2015, a total of 44 offenders were convicted of a misdemeanor for sexually abusing a 13 or 14 year old child with lascivious intent (as the primary offense) in general district court, juvenile and domestic relations court, or circuit court (see table below). Databases available to the Commission are not sufficiently detailed to identify cases in which the offender committed the offense against the will of the victim by ruse and would therefore be eligible for the proposed felony.

Offenders Convicted of Misdemeanor Sexual Abuse/Battery of a 13 or 14 Year Old

Data Source	Statute of Primary Offense	Total Number of Offenders	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence
General District Court Case Management System, FY2014-FY2015	§18.2-67.4:2 or §18.2-67.4(A,i) victim identified as 13 or 14 year old	0	N/A	N/A	N/A
Juvenile and Domestic Relations Court Case Management System, FY2014-FY2015	§18.2-67.4:2	22 adults	27.3%	72.7%	6 months
	§18.2-67.4(A,i) victim identified as 13 or 14 year old	5 adults	20.0%	80.0%	9 months
Circuit Court Case Management System, FY2014-FY2015**	§18.2-67.4:2	4 offenders	25.0%	75.0%	6 months
	§18.2-67.4(A,i) victim identified as 13 or 14 year old	13 offenders	30.8%	69.2%	8 months

Total: 44 Offenders

** The 17 offenders convicted in circuit court were initially charged with a felony, but were ultimately convicted of only misdemeanors. Offenders whose charges were brought to circuit court as the result of an appeal from juvenile and domestic relations court were excluded.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of § 18.2-67.3, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal. As a result, the magnitude of the impact on prison bed space needs cannot be quantified.

Local adult correctional facilities. Similarly, the proposal may impact local-responsible (jail) bed space needs. However, the magnitude of the impact cannot be quantified with existing data.

Adult community corrections resources. Because the proposal could result in 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 for aggravated sexual battery under § 18.2-67.3(A,4) are covered by the sentencing 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 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.

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 665 of the 2015 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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