



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1062 (Patron – Tran)

LD#: 18101257

Date: 1/16/2018

Topic: Limitations on prosecution

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000*
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Direct Care:**
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 836 of the 2017 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposed legislation amends § 19.2-8 of the *Code of Virginia*, relating to the limitation of prosecutions for certain offenses. Currently, the prosecution of a misdemeanor under the enumerated sections of the *Code* where the victim was a minor at the time of the offense must be commenced no later than one year after the victim reaches majority. Such sections include a number of Class 1 misdemeanor sexual offenses.¹

Under the proposal, the prosecution of violations of these sections may be commenced at any time after the date of the commission of the offense regardless of whether the victim was a minor at the time of the offense. Essentially, the proposal would expand the time period during which an individual may be prosecuted for one of the enumerated offenses.

Under § 18.2-67.5:1 of current *Code*, an offender convicted of a third misdemeanor offense involving sexual battery (§ 18.2-67.4), attempted sexual battery (§ 18.2-67.5(C)), consensual intercourse with a child

¹ Specifically, these offenses are under §§ 18.2-51.7 (for female genital mutilation), 18.2-64.2 (for carnal knowledge by certain employees), 18.2-67.4 (for sexual battery), 18.2-67.4:1 (for sexual intercourse with intent to transmit infection, etc), 18.2-67.4:2 (for sexual abuse of child age 13,14), 18.2-67.5 (for attempted rape, forcible sodomy, etc), and 18.2-370.6 (for penetrating with tongue a mouth of minor).

(§ 18.2-371), indecent exposure (§ 18.2-387), or peeping within ten years (§18.2-130) is guilty of a Class 6 felony.

Analysis:

General District Court CMS data for FY2016 and FY2017 indicate that 162 offenders were convicted of misdemeanors under §§ 18.2-67.4 and 18.2-67.5(C) for sexual battery or attempted sexual battery. Extending the period of time permitted for prosecution of these misdemeanor offenses may ultimately increase the number of offenders convicted of a Class 6 felony for a third or subsequent offense under § 18.2-67.5:1.

Existing databases do not provide sufficient detail to identify the number of new felony convictions that may result from enactment of the proposal. However, affected individuals may be sentenced similarly to those who are currently convicted of a felony under the specified sections/subsections.

According to FY2016 and FY2017 data from the Circuit Court Case Management System (CMS), a felony violation of § 18.2-67.5:1 was the primary, or most serious, offense in 19 sentencing events. More than half (52.6%) of these offenders received a state-responsible (prison) term for which the median sentence was 2.3 years. Another 42.1% of the offenders received a local-responsible (jail) term with a median sentence of six months. The remaining 5.3% did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal may increase the number of offenders ultimately convicted of a felony offense. As a result, the proposal could increase the future state-responsible (prison) bed space needs of the Commonwealth. However, data are not sufficiently detailed to estimate how many additional felony convictions may result from the proposal. Therefore, the magnitude of the impact cannot be quantified.

Local adult correctional facilities. Similarly, the magnitude of the impact on local-responsible (jail) bed space needs cannot be quantified.

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 under §18.2-67.5:1 are not covered by the sentencing guidelines when these offenses are the primary, or most serious, offense in a case. However, convictions under these statutes could 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 direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) 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 is \$0 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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