



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1516

Amendment in the Nature of a Substitute (Patron Prior to Substitute – Watts)

LD#: 18107756

Date: 3/1/2018

Topic: Prostitution-related crimes

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 proposal increases the penalty for violations of § 18.2-348 (aiding prostitution or illicit sexual intercourse) and § 18.2-349 (using vehicles to promote prostitution or unlawful sexual intercourse) from a Class 1 misdemeanor to a Class 6 felony in cases in which the offender violates one of these provisions with a person under the age of 18. Additionally, the proposal increases the penalty for violations of § 18.2-347 (keeping a bawdy place) from a Class 1 misdemeanor to a Class 6 felony when the offender intentionally violates the provision where he knows that the bawdy place is used or to be used for lewdness, assignation, or prostitution with a person under the age of 18.

The proposal also adds the newly-defined felony offenses to the following statutes:

- § 9.1-902 - Offenses requiring registration with the Sex Offender Registry, which would be applicable to offenses committed on or after July 1, 2018;
- § 17.1-805 - Definition of a violent felony offense for the purposes of Virginia's sentencing guidelines;
- § 18.2-46.1 - Definition of a "predicate criminal act" associated with gang activity; and
- § 18.2-513 - Definition of "racketeering activity" under Virginia's RICO provisions (§ 18.2-348 is included in the current statute, but § 18.2-347 and § 18.2-349 are not).

By adding §§ 18.2-347, 18.2-348, and 18.2-349 to the above statutes, the proposal expands the applicability of a number of felony offenses:

- Under § 18.2-472.1, the first Sex Offender 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.
- Under § 18.2-46.2, a criminal street gang member who knowingly participates in any predicate criminal act for the benefit of, or at the direction of, the gang is guilty of a Class 5 felony. If the offender is 18 years of age or older and knows that the gang includes a juvenile member, he is guilty of a Class 4 felony. In addition, § 18.2-46.3:3 provides enhanced penalties for violations of § 18.2-46.2 committed in specified locations such as schools. Under § 18.2-46.3:1, a third or subsequent conviction for a gang offense is elevated to a Class 3 felony.
- Any person or enterprise convicted of racketeering is guilty of a felony that is punishable by imprisonment of five to forty years, while a second or subsequent offense is punishable as a Class 2 felony (20 years to life in prison). The transmission of money derived from, or traceable to, racketeering activity is punishable as a Class 6 felony (1-5 years).

The proposal also amends other sections of the *Code* to modify references to gender. In § 18.2-49, the proposal replaces “female under sixteen years of age” with “child under 16 years of age.” In § 18.2-368 and § 19.2-305, the proposal replaces “wife” with “spouse.”

Lastly, the proposal expands the applicability of sentencing enhancements on Virginia’s sentencing guidelines. Offenders who have prior convictions for violent felony offenses, as defined in § 17.1-805, receive enhancements on the guidelines that increase the recommended sentences for those offenders.

Several statutes in the *Code* (§§ 18.2-248, 18.2-254.1, 18.2-308.2, 18.2-460, 19.2-120.1, and 19.2-303.5) contain references to § 17.1-805 in order to define a violent offender, to specify criminal penalties, to limit eligibility for a program, or to determine eligibility for release on bail. Statutes related to Virginia’s victim assistance fund (§ 19.2-368.2) and the restoration of civil rights (§ 53.1-231.2) also include references to § 17.1-805.

Analysis:

According to the General District Court Case Management System (CMS) for fiscal years 2016 and 2017, 494 offenders were convicted of a Class 1 misdemeanor under §§ 18.2-347, 18.2-348, or 18.2-349 during the two-year period. Existing data do not contain sufficient detail to determine the number of cases in which the offender violated one of these provisions with a person under the age of 18, as specified in the proposal. Offenders who violate these provisions with a person under the age of 18 would be subject to the proposed Class 6 felony.

According to fiscal year (FY) 2012 through FY2017 Sentencing Guidelines data, two offenders were convicted under § 18.2-49 for threatening, attempting or assisting an abduction. One of these offenders received a 12-month jail sentence, while the other offender did not receive an active term of incarceration to serve after sentencing. During the same six-year period, one offender was convicted under § 18.2-368 for placing or leaving his wife in a bawdy place for the purposes of prostitution or unlawful sexual intercourse. This individual received a one-year prison sentence. Existing data do not contain sufficient detail to determine the number of cases that would be affected by the proposed expansion of these provisions.

In addition, offenders convicted of the newly-defined felonies under §§ 18.2-347, 18.2-348, or 18.2-349 also could be subject to the penalties associated with Sex Offender Registry violations, criminal gang activity and/or racketeering. While the number of affected offenders cannot be estimated, affected

offenders may be sentenced similarly to those currently convicted under existing statutes (see table below).

Offenders Convicted of Select Felony Offenses, FY2016-FY2017

| Primary Offense | Total Number of Cases | Percent Sentenced to Probation | Percent Sentenced to Jail | Median Jail Sentence | Percent Sentenced to Prison | Median Prison Sentence |
|--|------------------------------|---------------------------------------|----------------------------------|-----------------------------|------------------------------------|-------------------------------|
| Felony violation of Sex Offender Registry requirements (§ 18.2-472.1) | 444 | 20.7% | 58.3% | 6 months | 21.0% | 1.2 years |
| Participation in criminal act to benefit a gang - no juvenile member (§ 18.2-46.2) | 28 | 14.3% | 25.0% | 12 months | 60.7% | 2.3 years |
| Participation in criminal act to benefit a gang with juvenile member (§ 18.2-46.2) | 9 | 0.0% | 11.1% | 12 months | 88.9% | 2.3 years |
| Participation in criminal act to benefit a gang with juvenile member in a gang-free zone (§ 18.2-46.3:3) | 3 | 0.0% | 100.0% | 6 months | 0.0% | NA |
| Participation in criminal act to benefit a gang (no juvenile member) in a gang-free zone (§ 18.2-46.3:3) | 0 | 0.0% | 0.0% | NA | 0.0% | NA |
| Third or subsequent gang offense (§ 18.2-46.3:1) | 0 | 0.0% | 0.0% | NA | 0.0% | NA |
| Racketeering under Va RICO Act | 14 | 21.4% | 0.0% | NA | 78.6% | 2.0 years |

Note: Analysis is based on cases in which the specified offense was the primary, or most serious, offense in the sentencing event.

Source: Supreme Court of Virginia - Circuit Court Case Management System (CMS), FY2016-FY2017

According to Sentencing Guidelines data for fiscal year (FY) 2016 and FY2017, 16.3% of offenders scored on the sentencing guidelines received a midpoint enhancement due to a prior violent felony offense currently listed in § 17.1-805(C). By amending § 17.1-805(C) to add offenses to the definition of a violent felony, offenders who have prior convictions for any of those offenses will be recommended by the sentencing guidelines for longer terms of state-responsible incarceration. Overall, Virginia's circuit court judges comply with the sentencing guidelines recommendations in nearly 80% of the felony cases before them.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal creates three new felony prostitution-related offenses, expands the applicability of a number of other felony offenses, and expands the applicability of sentencing guidelines enhancements. As such, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, the number of additional felony convictions, or potentially longer sentences, that may result from the proposal cannot be estimated; therefore, the impact of the proposal on prison bed space needs cannot be determined.

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

Adult community corrections resources. The potential impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. No adjustment to the guidelines is 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 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.

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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