



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 208

(Patron – Mullin)

LD#: 18101161

Date: 12/15/2017

Topic: 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 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 modifies § 18.2-67.4, relating to sexual battery. Currently, a person is guilty of sexual battery if he sexually abuses (1) a person against his or her will by force, threat, intimidation, or ruse, (2) more than one person or one person more than once within a two-year period, (3) an inmate, or (4) a probationer or parolee. Sexual battery is punishable as a Class 1 misdemeanor. The proposal expands the definition of sexual battery to include all instances of sexual abuse committed against the will of the complaining witness but without force, threat or intimidation or ruse.

Section 18.2-67.5:1 increases the penalty for misdemeanor sexual battery, attempted sexual battery, enumerated acts with a child, indecent exposure, and peeping from a Class 1 misdemeanor to a Class 6 felony if it is alleged in the indictment, warrant, or information that the offender has previously been convicted of two or more of the listed offenses within ten years of the current offense (with each offense occurring on a different date).

#### Analysis:

By expanding the definition of sexual battery, the proposal may increase the number of offenders convicted of a felony for a third or subsequent misdemeanor offense under § 18.2-67.5:1. Existing data do not contain sufficient detail to determine the number of offenders who would be affected by the proposed expansion. However, affected offenders may be sentenced similarly to those currently convicted under § 18.2-67.5:1.

According to fiscal year (FY) 2016 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.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By expanding the definition of sexual battery under § 18.2-67.4, the proposal may increase the number of offenders convicted of a felony for a third or subsequent misdemeanor offense under § 18.2-67.5:1. As a result, the proposal could increase the future state-responsible (prison) bed space needs of the Commonwealth. However, data do not contain sufficient detail to estimate the number of additional felony convictions that may result if the proposal is enacted.

**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 additional 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 as the primary (most serious) offense in a case; however, a conviction under this provision may 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.

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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 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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