



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 620 (Patron – Bell, Robert B.)

LD#: 18104741

Date: 2/7/2018

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, prosecution of violations of subsections A or B of § 3.2-6570, relating to animal cruelty, must commence within five years of the commission of the offense, with the exception of violations involving agricultural animals, which must commence within one year of the offense. In addition, § 19.2-8 specifies that prosecution of violations of § 18.2-386.1, relating to the unlawful taking of images of another, must commence within five years of the offense. The five-year period for prosecution applies to both misdemeanor and felony offenses defined in the specified sections/subsections. Also, under current provisions, prosecutions for misdemeanor violations of § 3.2-6570(E), relating to the killing of a domestic dog or cat to obtain its hide, are limited to one year after the offense.

Under the proposal, the prosecution of felony violations of the enumerated sections/subsections would no longer be restricted to five years. For these felonies, the time period for commencing prosecution would not be restricted. Essentially, the proposal extends the time period during which an individual may be prosecuted for a felony under the specified provisions. In addition, the time period for prosecution for Class 1 misdemeanors defined in § 3.2-6570(E) would be increased from one year to five years.

Analysis:

By expanding the length of time during which an offender may be prosecuted, the proposal may increase the number of offenders ultimately convicted of a felony under the specified sections/subsections of the *Code*. 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 Circuit Court Case Management System (CMS) data for fiscal year (FY) 2016 and FY2017, nine offenders were convicted of a felony under § 18.2-386.1 for creating an unlawful image of a person under the age of 18 (as the primary, or most serious, offense). One-third (33.3%) of these offenders were given a state-responsible (prison) term; the median sentence for those committed to prison was 1.5 years.

During the same two-year period, two offenders were convicted of a felony under § 3.2-6570(B) for a second or subsequent conviction involving cruelty to animals in which at least one act resulted in death. Neither offender received an active term of incarceration to serve after sentencing.

General District Court CMS data for FY2016 and FY2017 indicate that one offender was convicted of a misdemeanor under § 3.2-6570(E) for the killing of a domestic dog or cat to obtain its hide. Extending the period of time permitted for prosecution of this misdemeanor may ultimately increase the number of offenders convicted of a Class 6 felony for a second or subsequent offense.

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 § 3.2-6570 and § 18.2-386.1 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 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.