



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1603 (Patron – Obenshain)

LD#: 19104156

Date: 1/9/2019

Topic: Human trafficking and 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 2 of the Acts of Assembly of 2018, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal expands several prostitution-related offenses defined in § 18.2-346 (prostitution/commercial sexual conduct), § 18.2-348 (aiding prostitution or illicit sexual intercourse), and § 18.2-356 (receiving money for procuring a person for prostitution) to include additional types of sexual contact. Specifically, the proposal adds the touching of the intimate parts of another person with the intent to sexually arouse or gratify or allowing another person to touch one's own intimate parts with the intent to sexually arouse or gratify to the list of conduct that, when done for money or its equivalent, constitutes prostitution. Prostitution and the solicitation of prostitution are Class 1 misdemeanors (§ 18.2-346); however, it is a Class 6 felony to solicit prostitution from a minor 16 years of age or older and a Class 5 felony to solicit prostitution from a minor under the age of 16. Receiving money for procuring a person for prostitution or sex act (§ 18.2-356) is a Class 4 felony or, if the violation involves a minor under the age of 18, a Class 3 felony. By expanding § 18.2-346 to cover additional behaviors, the proposal potentially expands the applicability of felony offenses defined in § 18.2-357.1 (commercial sex trafficking), which is based on the definition of prostitution in § 18.2-346. Violation of § 18.2-357.1 is punishable as a Class 5 felony or, if the offender uses force, intimidation or deception, a Class 4 felony; if the offense involves a minor under the age of 18, it is a Class 3 felony. The proposal specifies that each violation of § 18.2-357.1 constitutes a separate and distinct felony.

The proposal also 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. The proposal adds these newly-defined felony offenses to § 9.1-902, requiring offenders who commit these felonies on or after July 1, 2019, to register with Virginia's Sex Offender Registry. 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.

Furthermore, the proposal expands the definition of a “predicate criminal act” associated with gang activity (§ 18.2-46.1) to include the newly-defined felonies in § 18.2-348 and § 18.2-349 as well as existing felony violations of § 18.2-346 (soliciting prostitution from a minor). The definition of “racketeering activity” under Virginia’s RICO provisions (§ 18.2-513) is expanded in the same manner (while § 18.2-348 is already included in the current statute, § 18.2-346 and § 18.2-349 are not). By expanding § 18.2-346, §18.2-348, and § 18.2-356 to cover additional behaviors (the touching of intimate parts), the proposal also expands the scope of felonies related to gang and racketeering activity. 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. Enhanced penalties apply to gang violations in specified locations, such as schools, and to third or subsequent convictions for gang offenses. 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.

Lastly, the proposal expands the definition of violent offenses for the purposes of Virginia’s sentencing guidelines (§ 17.1-805) by adding the newly-defined felonies in § 18.2-348 and § 18.2-349, as well as the existing felonies defined in § 18.2-346 (soliciting prostitution from a minor), certain felonies in § 18.2-355 (taking or encouraging another to enter a bawdy place for the purposes of prostitution), and all felonies in § 18.2-356 (receiving money for procuring a person for prostitution or sex act), and § 18.2-357 (pandering of another for prostitution). In so doing, the proposal expands the applicability of sentencing enhancements that are incorporated into the 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.

The proposal establishes the Virginia Prevention of Sex Trafficking Fund and expands offenses within the scope of a multi-jurisdictional grand jury.

Analysis:

According to the General District Court Case Management System (CMS) for fiscal years 2017 and 2018, 36 offenders were convicted of a Class 1 misdemeanor under § 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. In addition, offenders convicted of the newly-defined felonies under § 18.2-348 and § 18.2-349 could be subject to the penalties associated with Sex Offender Registry violations and (along with offenders convicted of other felonies specified in the proposal) criminal gang activity and/or racketeering.

Similarly, existing data sources are insufficient to estimate the number of additional convictions that may result if § 18.2-346, § 18.2-348, and § 18.2-356 are expanded to cover additional behaviors. By expanding these provisions, the proposal could also result in additional convictions for commercial sex trafficking, criminal gang activity and/or racketeering.

While the number of offenders who may be affected by the proposal cannot be determined, such individuals may be sentenced similarly to those who are currently convicted under existing provisions (see table below).

Offenders Convicted of Select Offenses, FY2017-FY2018

Primary Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
Prostitution or solicitation of prostitution (§ 18.2-346) ¹	592	71.8%	28.2%	1 month	NA	NA
Solicit prostitution from a minor age 16 or 17 (§ 18.2-346(B)) ²	1	0.0%	0.0%	NA	100.0%	4 years
Solicit prostitution from a minor under age 16 (§ 18.2-346(B)) ²	1	0.0%	0.0%	NA	100.0%	7 years
Aiding prostitution or illicit sexual intercourse (§ 18.2-348) ¹	24	29.2%	70.8%	3 months	NA	NA
Receiving money for procuring a person for prostitution or sex act (§ 18.2-356) ²	2	50.0%	50.0%	3 months	0.0%	NA
Receiving money for procuring a person under the age of 18 for prostitution or sex act (§ 18.2-356) ²	0	NA	NA	NA	NA	NA
Commercial sex trafficking (§ 18.2-357.1(A)) ²	25	8.0%	20.0%	6 months	72.0%	1.9 years
Commercial sex trafficking through force, intimidation or deception (§ 18.2-357.1(B)) ²	2	0.0%	50.0%	9 months	50.0%	2 years
Commercial sex trafficking of a person under the age of 18 (§ 18.2-357.1(C)) ²	4	0.0%	25.0%	10 months	75.0%	3.5 years
Felony violation of Sex Offender Registry requirements (§ 18.2-472.1) ³	509	19.5%	60.5%	6 months	20.0%	1.3 years
Participation in criminal act to benefit a gang - no juvenile member (§ 18.2-46.2) ³	30	33.3%	10.0%	6 months	56.7%	2 years
Participation in criminal act to benefit a gang with juvenile member (§ 18.2-46.2) ³	4	0.0%	0.0%	NA	100.0%	2 years
Participation in criminal act to benefit a gang with juvenile member in a gang-free zone (§ 18.2-46.3:3) ²	2	0.0%	50.0%	6 months	50.0%	1 year
Participation in criminal act to benefit a gang (no juvenile member) in a gang-free zone (§ 18.2-46.3:3) ²	1	0.0%	0.0%	NA	100.0%	5 years
Third or subsequent gang offense (§ 18.2-46.3:1) ²	0	0.0%	0.0%	NA	0.0%	NA
Racketeering - Va RICO Act ²	26	7.7%	7.7%	7.5 months	84.6%	3 years

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

¹Source: Supreme Court of Virginia - General District Court Case Management System, FY2017-FY2018

²Source: Supreme Court of Virginia - Circuit Court Case Management System, FY2017-FY2018

³Source: Virginia Criminal Sentencing Commission - Sentencing Guidelines Database, FY2017-FY2018

Impact of Proposed Legislation:

State adult correctional facilities. The proposal creates two 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 2 of the Acts of Assembly of 2018, Special Session I, 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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