

## Department of Planning and Budget 2020 Fiscal Impact Statement

**1. Bill Number:** HB251

House of Origin	<input checked="" type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Enrolled

**2. Patron:** Watts

**3. Committee:** House Committee for Courts of Justice

**4. Title:** Prostitution-related crimes; minors; penalties.

**5. Summary:** Increases from a Class 1 misdemeanor to a Class 6 felony the penalty for an adult for keeping, residing in, or visiting a bawdy place with a minor. The bill also adds felony violations of such offense to (i) the list of offenses for which registration in the Sex Offender and Crimes Against Minors Registry is required, (ii) the definition of violent felony for the purposes of the sentencing guidelines, (iii) the list of predicate criminal acts that constitutes the definition of street gangs, (iv) the list of offenses that may constitute racketeering under the Virginia Racketeer Influenced and Corrupt Organization Act, and (v) the offenses that may be investigated by a multi-jurisdiction grand jury. The bill also makes applicable to all persons, regardless of the gender of the victim, the crimes of (a) assisting or aiding in the abduction of or threatening to abduct a female under 16 years of age for the purpose of concubinage or prostitution, which the bill also changes to include any person under 18 years of age, and (b) placing or leaving one's wife in a bawdy place.

**6. Budget Amendment Necessary:** Yes, Item 402 and Item 425.

**7. Fiscal Impact Estimates:** Preliminary (see Item 8 below).

**8. Fiscal Implications:** According to the Virginia State Police (VSP), the proposed legislation will require a revision to an existing registration form (SP-236) and reprinting of the form. The estimated cost is approximately \$6,000.

According to the Criminal Sentencing Commission, 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 knows that the bawdy place is used or to be used for lewdness, assignation, or prostitution with a person under the age of 18.

Additionally, the proposal adds the newly-defined felony offense to the several other existing statutes: (1) offenses requiring registration with the Sex Offender Registry (§ 9.1-902); (2) the definition of a violent felony offense for the purposes of Virginia's sentencing guidelines (§ 17.1-805); (3) the definition of a "predicate criminal act" associated with gang activity (§ 18.2-46.1); (4) the definition of "racketeering activity" under Virginia's RICO provisions (§ 18.2-513); and (5) offenses within the scope of a multi-jurisdictional grand jury (§ 19.2-215.1).

Furthermore, by adding § 18.2-347 to the above statutes, the proposal expands the applicability of a number of felony offenses: (1) 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; (2) 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; (3) 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 amends other sections of the Virginia Code to modify references to gender. In § 18.2-49, the proposal replaces “female under sixteen years of age” with “person under the age of 18” (which also expands this provision to cover 16 and 17-year-old victims). In § 18.2-368, 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.

The proposed legislation also affects other several statutes in the Virginia Code (§§ 18.2-248, 18.2-254.1, 18.2-308.2, 18.2-460, 19.2-120.1, and 19.2-303.5) because they 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. This also includes 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.

Since the proposed legislation expands the applicability of a Class 1 misdemeanor, the proposed legislation may result in additional inmates being sent to jail. Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail. However, there is not enough information available to reliably estimate the increase in jail population as a result of this proposal. Nevertheless, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanant or otherwise local-responsible prisoner held in a jail and \$12.00 a day for each state-responsible prisoner. It also funds a considerable portion of the jails’ operating costs, e.g. correctional officers. The state’s share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board’s most recent Jail Cost Report (November 2019), the estimated total state support for local jails averaged \$34.07 per inmate, per day in FY 2018.

The proposed legislation creates a new felony prostitution-related offense, expands the applicability of a number of other felony offenses, and expands the applicability of sentencing guidelines enhancements. Therefore, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, available data do not provide sufficient detail to estimate the number of new felony convictions, or potentially longer sentences, which may result from enactment of the proposal. Therefore, the impact of this portion of the proposal on prison bed space needs cannot be determined. Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 854, 2019 Acts of Assembly, requires that a minimum impact of \$50,000 be assigned to the bill.

**9. Specific Agency or Political Subdivisions Affected:** The Virginia State Police; courts; local law enforcement; local jails.

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** None.