



## **Fiscal Impact Statement for Proposed Legislation**

### ***Virginia Criminal Sentencing Commission***

#### **Senate Bill No. 42 Amendment in the Nature of a Substitute (Patron Prior to Substitute – DeSteph)**

**LD #:** 20106403

**Date:** 1/30/2020

**Topic:** Aggravated 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 854 of the 2019 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 § 18.2-67.3 regarding aggravated sexual battery. Under the proposal, an accused is guilty of aggravated sexual battery if he or she sexually abuses the complaining witness, and the offense (not a recognized form of treatment) is committed without the express consent of the patient, by (i) a massage therapist during an actual or purported practice of massage therapy as defined in § 54.1-3000; (ii) a person practicing the healing arts, during an actual or purported practice of the healing arts, as those terms are defined in §§ 54.1-2900 and 54.1-2903; or (iii) a physical therapist during an actual or purported practice of physical therapy as defined in § 54.1-3473. Convictions under § 18.2-67.3 are punishable by a term of imprisonment of not less than one nor more than 20 years and by a fine of not more than \$100,000.

#### **Analysis:**

According to FY2018 and FY2019 Sentencing Guidelines (SG) data, a conviction for aggravated sexual battery under § 18.2-67.3 was the primary (or most serious) offense in 297 sentencing events. A large majority of the offenders (85.2%) were sentenced to a state-responsible (prison) term with a median sentence of 4.8 years. Another 8.4% of the offenders received a local-responsible (jail) term with a median sentence length of three months. The remaining 6.4% of offenders did not receive an active term of incarceration to serve after sentencing.

Data are insufficient to determine the number of incidents involving acts such as those described above, that are not covered by the current provisions.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposal expands the applicability of an existing felony, which is punishable by terms of imprisonment. In this way, the proposal could increase the state-responsible (prison) bed space needs of the Commonwealth. The number of additional felony convictions that may result from the proposal, and the net effect on sentences for those offenders, cannot be estimated; therefore, the magnitude of the impact cannot be determined.

**Local adult correctional facilities.** The proposal may also increase local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

**Adult community corrections programs.** Because the proposal could result in additional felony convictions and subsequent supervision requirements for those offenders, the proposal may affect adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections programs cannot be quantified.

**Virginia's sentencing guidelines.** Convictions under § 18.2-67.3 are covered by the sentencing 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 854 of the 2019 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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