

Department of Planning and Budget 2022 Fiscal Impact Statement

1. Bill Number: SB227ER

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: Obenshain

3. Committee: Passed by both houses

4. Title: Misdemeanor sexual offenses where the victim is a minor; statute of limitations; penalty.

5. Summary: The proposed legislation provides that the prosecution of the misdemeanor offense of causing or encouraging acts rendering children delinquent where the alleged adult offender has consensual sexual intercourse with a minor who is 15 years of age or older at the time of the offense shall be commenced no later than five years after the victim reaches majority provided that the alleged adult offender was more than three years older than the victim at the time of the offense. Under current law, the prosecution of such offense shall be commenced within one year after commission of the offense.

6. Budget Amendment Necessary: Yes, Item 404.

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

8. Fiscal Implications: The proposed legislation amends § 19.2-8 of the Code of Virginia, relating to the limitation of prosecutions for certain offenses by establishing that the statute of limitations begins after the victim reaches majority and not from the date of the offense, and expands the time period during which an individual may be prosecuted for a violation of clause (ii) of § 18.2-371. Under § 18.2-67.5:1 of current Code, an offender convicted of a third misdemeanor offense involving sexual battery, attempted sexual battery, consensual intercourse with a child, indecent exposure, or peeping within ten years is guilty of a Class 6 felony.

According to data collected and reviewed by the Virginia Criminal Sentencing Commission from fiscal year (FY) 2020 and FY 2021 from the Circuit Court Case Management System, a felony violation of § 18.2-67.5:1 was the primary, or most serious, offense in 28 sentencing events. Eleven offenders (39.3%) received a state-responsible (prison) term with a median sentence of 2.0 years. Another fifteen offenders (53.6%) were given a local-responsible (jail) term for which the median sentence was six months. Two offenders (7.1%) did not receive an active term of incarceration to serve after sentencing.

Because it extends the period during which prosecution may be sought for certain crimes, the proposal may increase the number of offenders ultimately convicted of a felony under § 18.2-67.5:1 for a third or subsequent misdemeanor 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 if the proposal is enacted. Therefore, the fiscal impact cannot be quantified.

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 552, 2021 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

The proposed legislation may also increase the local-responsible jail bed space needs. 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 would increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanor 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 2021), the estimated total state support for local jails averaged \$37.58 per inmate, per day in FY 2020.

9. Specific Agency or Political Subdivisions Affected: Department of Corrections, Local and regional jails, law enforcement agencies, Courts, Commonwealth's Attorneys, and Public Defenders Offices.

10. Technical Amendment Necessary: No.

11. Other Comments: None.