



## **Impact Analysis on Proposed Legislation**

*Virginia Criminal Sentencing Commission*

### **House Bill No. 1054 Amendment in the Nature of a Substitute (Patron –Albo)**

**Date Submitted:** 02/19/2004

**LD #:** 04-0990204

**Topic:** Non-forcible sodomy and fornication

#### **Proposed Change:**

The proposed legislation is, in part, a response to United States Supreme Court's decision in the Lawrence et al. v. Texas case. The proposal does not modify the existing statute for crimes against nature (§ 18.2-361) but adds a new statute (§ 18.2-361.1) to redefine the same crimes. The new statute has two differences: (1) it specifically prohibits carnal knowledge by anus or mouth in a public place, and (2) it adds any act of carnal knowledge as defined in § 18.2-63 to those acts that are prohibited between certain family members (sexual intercourse between certain family members is prohibited currently under § 18.2-366).

The proposal repeals § 18.2-344 (relating to fornication between unmarried persons) and modifies § 18.2-345 to remove the reference to unmarried people who live together and to specifically prohibit lewd and lascivious behavior in a public place.

The proposal amends statutes relating to indecent liberties (§§ 18.2-370 and 18.2-370.1) and prostitution (§§ 18.2-346 and 18.2-356) by replacing references to § 18.2-361 with references to the definition of carnal knowledge found in § 18.2-63.

Revisions to other statutes add a reference to the proposed § 18.2-361.1 wherever there is a reference to the existing § 18.2-361. References to § 18.2-344, repealed by the proposal, are removed throughout.

The proposal modifies § 9.1-902 to define a violation of subsection A or C of the proposed § 18.2-361.1 as a "sexually violent offense" for the purposes of sex offender registration if the offender has two or more prior convictions for crimes listed under that subsection. The current provision includes the existing § 18.2-361.

The proposal expands the definition of contributing to the delinquency of a minor (§ 18.2-371) by making any act of carnal knowledge (as defined in § 18.2-63) between an adult and a child 15 or older a Class 1 misdemeanor; the current statute is limited to sexual intercourse.

The proposal expands § 18.2-374.3, which prohibits the use of a communications device to facilitate certain offenses involving children, to include contributing to the delinquency of a minor (§ 18.2-371).

---

The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.

**Data Analysis:**

Based on FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, there were 51 convictions for non-forcible sodomy under the existing § 18.2-361. Data sources are not available to specifically identify if the sodomy occurred in a public place. However, one can surmise that if a victim did not report the sexual contact, then authorities would have had to observe the crime to obtain a conviction. In 11 of these cases, victim information is available from the PSI; some type of injury was also reported that would indicate the actual offense behavior was not consensual and that the conviction may be the result of a plea agreement. This may indicate that the 40 other sodomies occurred in a public place or at least were observed by law enforcement and may have been consensual in nature. Approximately 37% of the convictions for non-forcible sodomy resulted in a state-responsible (prison) term, with a median sentence of two years. Additional offenses for non-forcible sodomy may be prosecuted under § 18.2-29 (soliciting a felony), but data sources do not contain that level of detail.

There were no convictions for the Class 3 misdemeanor of lewd or lascivious behavior (§ 18.2-345), and only one for the subsequent conviction (Class 1 misdemeanor); this conviction resulted in a local-responsible (jail) sentence of 15 days (FY2000-FY2001 LIDS data). Since records indicate only one offender was convicted, it is implied that the section of § 18.2-345 pertaining to unmarried couples was not applicable in this case.

Contributing to the delinquency of a minor (§ 18.2-371) by engaging in consensual sexual intercourse is a Class 1 misdemeanor. Data sources do not indicate if convictions were made under this statute for consensual carnal knowledge (i.e., cunnilingus, fellatio, anallungus, anal intercourse or object sexual penetration). Of the 47 convictions included in the LIDS data, all but three cases resulted in a jail sentence. The average (median) amount served in a local-responsible facility is 1.4 months.

**Background Sentencing Information**

Felony Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Prison Sentence
Non-forcible sodomy § 18.2-361	51	33.3%	29.4%	37.3%	2 years
Solicitation to commit a felony § 18.2-29	32	40.6%	18.8%	40.6%	2 Years

Data Source: FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) database

Misdemeanor Crimes	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Local Responsible Sentence
Contributing, consensual - intercourse with minors § 18.2-371	47	6.3%	93.6%	0%	1.4 months

Note: Includes only convictions of those held in the local jail pretrial or sentenced to serve time post-trial.

Data Source: FY2001 and FY2002 Local Inmate Data System (LIDS) database

---

The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.

**Impact of Proposed Legislation:**

The impact of the proposal on the state-responsible (prison) and local-responsible (jail) bed space needs of the Commonwealth cannot be determined.

It is likely that the majority of convictions under the existing § 18.2-361 came to the attention of law enforcement because they were acts committed in a public place. Therefore, the proposed § 18.2-361.1 may not result in a decrease in the number of prison beds needed. Limiting the provisions of § 18.2-345 as proposed will not likely have an impact on prison beds, as these crimes are punishable as misdemeanors only. Fornication under § 18.2-344 is punishable by a fine up to a \$250; repealing this provision will have no impact on prison or jail bed space.

However, the proposal expands the definition of contributing to the delinquency of a minor (§ 18.2-371) and the prohibition against using a communications device to facilitate certain offenses involving children (§ 18.2-374.3); it also adds object sexual penetration to acts that are prohibited between certain family members (proposed § 18.2-361.1). Due to limitations in the available data, the number of incidents that may be affected by these aspects of the proposal cannot be identified. Therefore, the impact on the state-responsible (prison) bed space needs of the Commonwealth 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 and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

sex05\_0990