



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2279

(Patron – Watts)

LD#: 07-8183544

Date: 12/27/2006

Topic: Sexual offenses against children

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$3,890,132 (151 beds)
- **Local Adult Correctional Facilities:**
Save at least \$75,250 (-7 beds)
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

Summary of Proposed Legislation:

The proposal amends the *Code of Virginia* to consolidate offenses constituting indecent liberties under a single statute and to expand the definition of the crime of indecent liberties. Under the proposal, § 18.2-370.1 (prohibiting indecent liberties by a person having a custodial or supervisory relationship over a minor) is repealed and the offense is added to § 18.2-370. In addition, the proposal expands the crime of indecent liberties to include any act of sexual abuse as defined in § 18.2-67.10 (subdivision 6) and any act in which the offender proposes that the child expose himself to, or fondle the genital parts of, a person other than the offender. The proposal increases penalties for certain acts of indecent liberties based on the age of the victim and the offender's relationship to the victim (as shown below).

Offense(s)	Victim's Age	Offender Relationship	Current Penalty	Proposed Penalty
Take indecent liberties with a child (proposed § 18.2-370 B)	Less than 13 years of age	Other than parent, step-parent, grandparent or step-grandparent	Class 5 felony (1 to 10 yrs.) – 1 st violation	Imprisonment 1 to 20 yrs. – 1 st violation
			Class 4 felony (2 to 10 yrs.) – 2 nd violation	Class 3 felony (5 to 20 yrs.) – 2 nd violation
	Less than 15 years of age	Parent, step-parent, grandparent or step-grandparent	Class 4 felony (2 to 10 yrs.)	Imprisonment 1 to 20 yrs. – 1 st violation
				Class 3 felony (5 to 20 yrs.) – 2 nd violation
	15 to 17 years of age	Parent, step-parent, grandparent or step-grandparent	Class 5 felony (1 to 10 yrs.) – 1 st violation	Imprisonment 1 to 20 yrs. – 1 st violation
			Class 4 felony (2 to 10 yrs.) – 2 nd violation	Class 3 felony (5 to 20 yrs.) – 2 nd violation

Offense(s)	Victim's Age	Offender Relationship	Current Penalty	Proposed Penalty
Take indecent liberties with a child - other than receiving money, property, etc., for allowing or enticing a minor to perform in or be the subject of sexually explicit material (proposed § 18.2-370 C)	13 or 14 years of age	Other than parent, step-parent, grandparent, step-grandparent	Class 5 felony (1 to 10 yrs.) – 1 st violation Class 4 felony (2 to 10 yrs.) – 2 nd violation	Same as current
Take indecent liberties with a child by receiving money, property, etc., for allowing or enticing a minor to perform in or be the subject of sexually explicit material (proposed § 18.2-370 C)	Less than 18 years of age	Other than parent, step-parent, grandparent, step-grandparent	Class 5 felony (1 to 10 yrs.) – 1 st violation Class 4 felony (2 to 20 yrs.) – 2 nd violation	Same as current
Indecent liberties by a person having a custodial or supervisory relationship over a minor (proposed § 18.2-370 D)	15 to 17 years old	Other than parent, step-parent, grandparent, step-grandparent	Class 6 felony (1 to 5 yrs.) – 1 st violation Class 5 felony (1 to 10 yrs.) – 2 nd violation	Same as current

The 2005 General Assembly expanded the application of § 18.2-370 from children under the age of 14 to children under the age of 15. The 2005 General Assembly also increased the penalties for a parent, step-parent, grandparent or step-grandparent who commits indecent liberties upon his child, step-child, grandchild or step-grandchild. Both changes were effective July 1, 2005.

Analysis:

According to fiscal years (FY) 2004 and 2005 Sentencing Guidelines (SG) data, there were 215 convictions for indecent liberties under §§ 18.2-370 or 18.2-370.1. Sentencing information is presented in the table below.

FY2004 and FY2005 Felony Sentencing Information

Felony Offense	Total Cases	Disposition				
		No Active Incarceration	Local-Responsible (Jail)		State-Responsible (Prison)	
		% of Cases	% of Cases	Median Sentence	% of Cases	Median Sentence
§ 18.2-370(A) - indecent liberties victim under age 14	106	15.1%	36.8%	6 mos.	48.1%	2 yrs. ^a
§ 18.2-370.1(A) - indecent liberties by custodian	109	25.7%	29.3%	6 mos.	45.0%	2 yrs. ^b

Note: Sentence data reflects the total effective sentence (imposed less suspended time) given for all offenses in the same sentencing hearing. The median sentence is the middle value, above and below which lie an equal number of cases. Data do not reflect changes to § 18.2-370(A) made by the 2005 General Assembly.

Data Source: Sentencing Guidelines (SG) database.

^a 2% of cases were sentenced to the maximum penalty of 10 years allowed by statute.

^b 4% of cases were sentenced to the maximum penalty of 5 years allowed by statute.

Impact of Proposed Legislation:

State adult correctional facilities. By increasing the penalties for certain violations of § 18.2-370, the proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. Because existing data are not sufficiently detailed to identify all offenders affected by the proposal, the full impact of the proposal cannot be quantified. The impact of increasing penalties for offenders who commit indecent liberties with a child under the age of 13, however, can be estimated. Therefore, the impact of the proposal on prison beds is estimated to be at least 151 beds by FY2013. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$3,890,132.

Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY08	FY09	FY10	FY11	FY12	FY13
9	37	71	104	130	151

Local adult correctional facilities. The proposal will likely reduce the future need for local-responsible (jail) beds, as some offenders who historically received a jail sentence will be sentenced to serve a prison term under the increased penalties specified in the proposal. The impact on local-responsible (jail) beds is estimated to be a net reduction of at least seven beds statewide by FY2013 (state savings: \$75,250; local savings: \$69,578).

Estimated Six-Year Impact in Local-Responsible (Jail) Beds

FY08	FY09	FY10	FY11	FY12	FY13
-4	-7	-7	-7	-7	-7

Adult community corrections resources. The increased penalties in the proposal may result in longer terms of suspended incarceration and/or longer periods of community supervision for some offenders. However, the proposal will likely delay the need for services for many offenders affected by the proposal, as many will serve longer prison terms than the terms currently served by offenders convicted of these crimes.

Virginia's sentencing guidelines. The sentencing guidelines are calibrated to historical incarceration rates and reflect historical sentencing patterns of Virginia's circuit court judges. The proposal may require the Commission to recalibrate the Other Sexual Assault sentencing guidelines.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$3,890,132 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.

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary's Committee on Inmate Forecasting in 2006.
2. New cases representing state-responsible sentences were based on forecasts developed for the Secretary's Committee on Inmate Forecasting and approved in July 2006.
3. Cost per prison bed was assumed to be \$25,709 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.***
4. Cost per jail bed was based on the Compensation Board's FY2005 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.37 per day or \$10,362 per year. The local cost was calculated by using the daily expenditure cost of \$59.24 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$26.23 per day or \$9,581 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.***
5. The impact of the proposed legislation, which would be effective on July 1, 2007, is phased in to account for case processing time.

Assumptions relating to sentence lengths

1. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2005. For sexual assaults, this rate was 11.58%.
2. To gauge the impact of proposed penalty structure, existing offenses in the *Code of Virginia* with penalty structures matching those proposed were analyzed. For example, it was assumed that the distribution of sentences for felony violations involving a victim less than 13 years of age will be similar to the distribution of sentences for convictions involving aggravated sexual battery of a victim less than 13 years of age, which is punishable by imprisonment of 1 to 20 years.

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