



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2578

(Patron – Shannon)

LD#: 07-7710502

Date: 12/21/2006

Topic: Taking indecent liberties with children

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

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

Summary of Proposed Legislation:

The proposal amends §§ 18.2-370 and 18.2-370.1 to expand the crime of indecent liberties to include cases in which a person proposes that a child feel or fondle the child's own sexual or genital parts.

Currently, § 18.2-370 states that it is a Class 5 felony for a person 18 years of age or over to take indecent liberties with a child under the age of 15. Indecent liberties is defined by § 18.2-370 as the 1) exposure of sexual parts to a child or proposal that a child expose his sexual parts, 2) proposal that a child fondle the offender's sexual parts or proposal that the offender fondle the child's sexual parts, 3) proposal that the child perform an act of sexual intercourse or any act under § 18.2-361 (bestiality or non-forcible sodomy), or 4) enticement, etc., of a child to enter a vehicle, house, etc., for any purpose specified above. Under § 18.2-370.1, it is a Class 6 felony for a person 18 years of age or over to take indecent liberties with a child under the age of 18 over whom he maintains a custodial or supervisory relationship; indecent liberties under this provision includes acts described in § 18.2-370 above as well as sexual abuse as defined in § 18.2-67.10(6).

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.

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 on those convictions are 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 does 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. Because it expands the definition of the crime of indecent liberties with children, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, criminal justice databases are insufficient to determine the number of additional cases that could be prosecuted as indecent liberties under the proposal. Therefore, the impact on state-responsible (prison) bed space needs cannot be determined.

Local adult correctional facilities. The proposal may increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be quantified with existing data.

Adult community corrections resources. The proposal may increase the need for adult community corrections resources; however, the magnitude of the impact cannot be quantified with existing data.

Virginia's sentencing guidelines. Offenses under §§ 18.2-370 and 18.2-370.1 are covered by the sentencing guidelines as the primary (or most serious) offense in a sentencing event. Although the new element may increase the number of cases sentenced under these statutes, the essential nature of the crime will not change and these cases would be subsumed under existing guidelines. No adjustment to the guidelines is necessary under the proposal.

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 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.