



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2979

(Patron – Bell)

LD#: 07-3235232

Date: 12/20/2006

Topic: Use of electronic means to facilitate certain offenses against children

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$141,226 (5 beds)
- **Local Adult Correctional Facilities:**
Negligible
- **Adult Community Corrections Programs:**
Cannot be determined

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

Summary of Proposed Legislation:

The proposal amends subsection A of § 18.2-374.3 to increase the penalty for using a communication system, including but not limited to computers or computer networks, for the purposes of procuring or promoting the use of a minor for any activity in violation of §§ 18.2-370 or 18.2-374.1. Under the proposal, the penalty for this offense is raised from a Class 6 felony to a Class 5 felony.

Analysis:

In 2006, the Virginia Criminal Sentencing Commission conducted a special study of offenses involving child pornography and online/electronic solicitation of minors. According to the Commission's data, from July 2002 through April 2006, 29 offenders studied were convicted of a Class 6 felony for using a communication system to promote or procure the use of minors in obscene material or for any activity in violation of § 18.2-370 (indecent liberties). For this crime, 31% of offenders received a prison term with a median prison sentence of 1.7 years. Nearly one in four offenders (24%) was ordered to serve a jail term. Almost half of the offenders convicted of this crime (45%) were given probation without an active term of incarceration. None of the offenders were sentenced to the maximum term available under current law.

Impact of Proposed Legislation:

State adult correctional facilities. Increasing the statutory penalty range for violations of the proposed § 18.2-374.3(A) is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. The impact on state-responsible (prison) beds is estimated to be five beds by FY2013. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$141,226.

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

FY08	FY09	FY10	FY11	FY12	FY13
1	2	4	4	5	5

Local adult correctional facilities. The proposal is expected to have a negligible impact on the future need for local-responsible (jail) beds.

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 other offenders affected by the proposal, as they will serve longer prison terms than the terms currently served by offenders convicted of these crimes.

Virginia's sentencing guidelines. Currently, offenses under § 18.2-374.3 are not covered by Virginia's sentencing guidelines as the primary (or most serious) offense in a sentencing event. However, convictions under this statute may augment the guidelines recommendation if a covered offense is the most serious at conviction. The Virginia Criminal Sentencing Commission will be recommending to the 2007 General Assembly that these offenses be added to the sentencing guidelines beginning July 1, 2007.

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 \$141,226 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 sex offenses, this rate was 11.28%.
2. To gauge the impact of proposed penalty structure, it was assumed that the distribution of sentences for offenders affected by the proposal will be similar to the distribution of sentences for felony convictions involving electronic procurement of minors for prostitution, sodomy, or pornography, a Class 5 felony specified in subsection B of § 18.2-374(B).