



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 814

(Patron – Cuccinelli)

LD#: 07-3071720

Date: 12/29/2006

Topic: Sexually explicit material

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 adds § 18.2-152.3:2 to restrict commercial electronic mail containing sexually explicit visual material. The proposal requires that such electronic mailings include:

- A subject heading with the words “SEXUALLY EXPLICIT” in capital letters;
- The body of the message contains:
 - the words “sexually explicit” in capital letters,
 - a clear and conspicuous identification that the message is an advertisement or solicitation,
 - a clear and conspicuous statement on how to avoid viewing the sexually oriented material, and
 - instructions on how to access the sexually explicit material.

Under the proposal, a violation is punishable as a Class 6 felony.

Analysis:

This proposal is based on the CAN-SPAM Act of 2003 (Controlling the Assault of Non-Solicited Pornography and Marketing Act). According to the Federal Trade Commission, the act, which became effective on January 1, 2004, establishes requirements for those who send commercial e-mail, spells out penalties for spammers and companies whose products are advertised in spam if they violate the law, and gives consumers the right to ask e-mailers to stop sending spam.

According to a July 20, 2005, and U.S. Department of Justice (DOJ) press release, seven cases (these cases may involve multiple defendants) have been filed based on the CAN-SPAM Act. In an August 25, 2005, press release, DOJ reported the first conviction under the Act; it was part of a guilty plea leading to the indictment of three others. Since that time, two additional defendants have plead guilty (March 6, 2006, DOJ press release).

Impact of Proposed Legislation:

State adult correctional facilities. By creating a new felony, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, the number of additional felony convictions that may result from the proposal cannot be estimated. Therefore, the impact of the proposal on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, local-responsible (jail) bed space needs may increase, but the impact cannot be quantified.

Adult community corrections programs. The extent to which adult community corrections programs may be affected cannot be determined.

Virginia's sentencing guidelines. Convictions under the proposed § 18.2-152-3:2 would not be covered by the sentencing guidelines as the primary (most serious) offense in a case; however, convictions for this crime may augment the guidelines recommendation if a covered offense is the most serious at sentencing. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According 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 reports that the proposal is not expected to increase juvenile detention facilities bed space needs.

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.

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