



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 574

(Patron – Watts)

LD#: 08-4526784

Date: 12/28/2007

Topic: Indecent liberties with certain children

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$525,617 (19 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 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, crimes described in § 18.2-370 (indecent liberties with children) and § 18.2-370.1 (indecent liberties by a person having a custodial or supervisory relationship over a minor) are combined into a new statute.¹ In addition, the proposal expands the crime of indecent liberties to include any act of sexual abuse as defined in subdivision 6 of § 18.2-67.10 and any act in which the offender proposes that a child engage in fondling of sexual parts with a person other than the offender (these acts are currently included in the description of indecent liberties by a custodian [§ 18.2-370.1] but are not included in the definition of indecent liberties by a non-custodian [§ 18.2-370]).

The proposal modifies the 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	Less than 13 years of age	Not a parent, step-parent, grandparent or step-grandparent	Class 5 felony	Imprisonment 1 to 10 yrs. (This has the effect of removing the option for a judge or jury to impose a jail sentence of up to 12 months in lieu of a prison term, as provided in § 18.2-10)
	13 to 14 years of age (or less than 18 years of age under the proposed subdivision A6)	Not a parent, step-parent, grandparent or step-grandparent	Class 5 felony	Same as current
	Less than 15 years of age	Parent, step-parent, grandparent or step-grandparent	Class 4 felony	Imprisonment 2 to 10 yrs.

¹ Existing provisions of §§ 18.2-370 and 18.2-370.1 are not repealed under the proposal.

Offense(s)	Victim's Age	Offender Relationship	Current Penalty	Proposed Penalty
Take indecent liberties with a child	15 to 17 years of age	Parent, step-parent, grandparent or step-grandparent	Class 5 felony	Imprisonment 1 to 10 yrs. (This has the effect of removing the option for a judge or jury to impose a jail sentence of up to 12 months in lieu of a prison term, as provided in § 18.2-10)
Indecent liberties by a person having custodial or supervisory relationship over a minor	Less than 13 years of age	Not a parent, step-parent, grandparent, step-grandparent	Class 6 felony	Imprisonment 1 to 10 yrs. (This also removes the option for a judge or jury to impose a jail sentence of up to 12 months in lieu of a prison term, as provided in § 18.2-10)
	13 to 14 years of age (or less than 18 years of age under the proposed subdivision A6)	Not a parent, step-parent, grandparent, step-grandparent	Class 6 felony	Class 5 felony
	15 to 17 years of age	Not a parent, step-parent, grandparent, step-grandparent	Class 6 felony	Same as current

Finally, the proposal modifies penalties for second or subsequent violations. Currently, a second or subsequent conviction for indecent liberties under § 18.2-370 is a Class 4 felony, while a second or subsequent conviction for indecent liberties by a custodian under § 18.2-370.1 is a Class 5 felony. Under the proposal, the penalty for any act of indecent liberties, when it is admitted or found by the judge or jury that the offender has a prior conviction for indecent liberties or any other sexual offense listed in § 18.2-67.5:2, is a mandatory sentence equal to the statutory maximum penalty for the offense. This sentencing option is available under the existing provisions of § 18.2-67.5:2 when sought by the Commonwealth's attorney.

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) 2006 and 2007 Sentencing Guidelines (SG) data, there were a total of 247 cases with a conviction for indecent liberties under §§ 18.2-370 or 18.2-370.1 as the most serious offense. Sentencing information is presented in the table that follows.

FY2006 and FY2007 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 15	123	17.1%	23.6%	7 mos.	59.3%	2 yrs. ^a
§ 18.2-370.1(A) - indecent liberties by custodian	124	20.1%	34.7%	6 mos.	45.2%	2.5 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 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 3% of cases were sentenced to the maximum penalty of 5 years allowed by statute.

For certain acts of indecent liberties, the proposal eliminates the option for a judge or jury to impose a jail sentence of up to 12 months, in lieu of a prison term. During FY2006 and FY2007, three offenders were given an imposed sentence of this type. Under the proposal, the judge or jury would have to impose a sentence of at least one year; however, judges would retain the option of suspending time from imposed sentences.

According to Pre/Post-Sentence Investigation (PSI) data for FY2006 and FY2007, 16 offenders were convicted for a second or subsequent act of indecent liberties (custodial and non-custodial) as the most serious offense. For these cases, the proposal calls for a mandatory sentence equal to the statutory maximum penalty. The proposed mandatory penalty would also apply to offenders convicted of indecent liberties who have a prior conviction for any other sex offense listed in § 18.2-67.5:2. This would appear to increase penalties for many repeat offenders; however, this option is currently available under the existing provisions of § 18.2-67.5:2. PSI data suggest that this option has been used infrequently, as there was only one case recorded in FY2006 and FY2007.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the provisions related to indecent liberties and increasing the penalties for certain acts of indecent liberties committed by a custodian, the proposal is expected to increase the need for state-responsible (prison) beds. 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 custodians who commit indecent liberties against younger victims, however, can be estimated. The impact of this aspect of the proposal is estimated to be 19 beds by FY2014. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$525,617.

This analysis assumes that offenders convicted of indecent liberties who have a prior conviction for this crime or any other sex offense listed in § 18.2-67.5:2 will receive the mandatory penalty (equal to the statutory maximum) at the same rate as they have in past. Should the proposal result in additional offenders receiving this penalty, the impact on state-responsible (prison) beds would be considerably higher. In addition, judges who currently utilize the jail sentencing option for certain indecent liberties offenders will have to impose at least the proposed statutory minimum and suspend more time than they do now in order to maintain the same active incarceration periods. This leaves more suspended time that can be re-imposed should an offender violate his probation or other community supervision; if judges re-impose all of the new suspended time for the violation, the proposal's impact would be higher than what is calculated here.

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

FY098	FY10	FY11	FY12	FY13	FY14
2	6	10	13	16	19

Local adult correctional facilities. The proposal may reduce the future need for local-responsible (jail) beds, as some offenders who historically received a jail sentence could be sentenced to serve a prison term under the penalties specified in the proposal; however, the impact is expected to be negligible (less than one bed statewide).

Adult community corrections resources. The impact on state community corrections resources cannot be determined. The proposal could delay the need for services for some felony offenders affected by the proposal, as they will be serving longer incarceration terms than those currently served by offenders convicted of this crime. However, the proposal could also result in longer periods of suspended time for some offenders, who may then have longer periods of community supervision to satisfy. The net impact on community corrections cannot be determined.

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 at some point in the future.

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 \$525,617 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 of Public Safety's Committee on Inmate Forecasting in 2007.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety's Committee on Inmate Forecasting and approved in July 2007.
3. Cost per prison bed was assumed to be \$27,452 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 FY2006 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.42 per day or \$10,381 per year. The local cost was calculated by using the daily expenditure cost of \$61.48 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 \$28.51 per day or \$10,413 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.* Note: The Compensation Board does not include data from jails that were not in operation for the entire fiscal year. Middle River Regional Jail was excluded because it opened during FY2006, while Augusta and Tazewell Counties were excluded because their

jails were closed during the same time period; Augusta County now participates in the new Middle River Regional Jail and Tazewell County now participates in the Southwest Virginia Regional Jail.

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, 2006. For sex crimes, this rate was 12.06%.
2. To gauge the impact of the proposed penalty structure, it was assumed that, should the proposal be enacted, sentences for offenders affected by the proposal will be similar to sentences currently given for the most comparable crime defined in the *Code of Virginia*. Indecent liberties offenses defined in current *Code* were identified and those with penalties matching the proposed penalties were analyzed. It was assumed that the distribution of sentences for indecent liberties committed by a custodian against a victim under the age of 13 (which, under the proposal, would be increased from a Class 6 felony to a felony punishable by 1 to 10 years) will be similar to the distribution of sentences currently given for indecent liberties committed by a non-custodian against a victim under the age of 13 (a Class 5 felony under existing law, punishable by up to 10 years in prison). Similarly, the distribution of sentences for indecent liberties committed by a custodian against a victim 13 to 14 years of age (increased from a Class 6 to a Class 5 felony under the proposal) will be similar to the distribution of sentences currently given for indecent liberties by a non-custodian against a victim 13 to 14 years of age (an existing Class 5 felony).

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