



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 3

(Patron – Puller)

LD#: 08-0302304

Date: 12/7/2007

Topic: Elements of indecent exposure

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined, likely to be small
- **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 § 18.2-387 to expand the definition of indecent exposure. Currently, a person who intentionally makes an obscene display or exposure of his person in any public place or in any place where others are present is guilty of indecent exposure. The proposal expands this definition by modifying language referring to the location of such acts. While the current language includes any public place and “any place where others are present,” the proposal includes a person exposing himself in a public place or in “any place where others may see him, intending that he be seen by others.” For example, the proposal could include acts committed inside a house in front of a window with the intent that others see.

Amending § 18.2-387 also affects § 18.2-67.5:1, which elevates a third conviction for certain misdemeanor sex offenses within 10 years to a Class 6 felony. This statute includes indecent exposure (§ 18.2-387), sexual battery (§ 18.2-67.4), attempted sexual battery (§ 18.2-67.5(C)), violation of § 18.2-371 involving consensual intercourse with a child, and peeping (§ 18.2-130).

Analysis:

According to calendar year (CY) 2005 and CY2006 Local Inmate Data System (LIDS) data, a total of 408 offenders held pre- or post-trial in jail were convicted of a Class 1 misdemeanor under § 18.2-387 for indecent exposure. For 351 of the 408 offenders, this misdemeanor crime was the most serious charge at conviction. Most offenders held in jail received an active term of incarceration for the offense; the median jail sentence was approximately two months. Seven offenders were sentenced to a 12-month term, the maximum allowable under the current statute.

According to fiscal year (FY) 2006 and FY2007 Pre/Post-Sentence Investigation (PSI) data, eight persons were convicted of a Class 6 felony under § 18.2-67.5:1 as the primary (most serious) offense. Each of the eight had a conviction for indecent exposure either as the current offense or as one of the prior misdemeanor offenses. Six of the eight offenders received a prison term, for which the median sentence was 1.5 years.

Impact of Proposed Legislation:

State adult correctional facilities. Because it expands the applicability of an existing Class 6 felony, the proposal could increase the need for state-responsible (prison) beds. The number of additional felony convictions that may result from the proposal, however, cannot be determined. Although the magnitude of the impact cannot be quantified, it is expected to be small.

Local adult correctional facilities. Because it expands the applicability of an existing Class 1 misdemeanor and Class 6 felony, the proposal could increase the need for local-responsible (jail) beds. The magnitude of the impact, however, cannot be determined.

Adult community corrections resources. By expanding the applicability of existing crimes, the demand for local community-based and state community corrections programs may increase. The impact on local and state community corrections resources cannot be quantified.

Virginia's sentencing guidelines. As a misdemeanor, indecent exposure (§ 18.2-387) is not covered by the sentencing guidelines. The guidelines also do not cover felony conviction under § 18.2-67.5:1 when this crime is the primary (most serious) offense in the case. A conviction under one of these provisions, however, could augment the guidelines recommendation as an additional offense if the most serious offense at sentencing is covered by the guidelines. No adjustment to the sentencing guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), expanding the definition of indecent exposure is not expected to increase the bed space needs for juvenile correctional centers (JCC).

Juvenile detention facilities. The Department of Juvenile Justice reports that the bed space needs of juvenile detention facilities will not be impacted by the proposal.

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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