



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1823

(Patron – Oder)

LD#: 11100006

Date: 9/8/2010

Topic: Sex offenses prohibiting residing in proximity to children

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 874 of the 2010 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposed legislation amends § 18.2-370.3 regarding certain offenders who are prohibited from residing in proximity to places frequented by children. The proposal expands the list of places where a qualifying offender may not reside to include residences within 500 feet of a playground, recreation center, athletic field or facility, or public pool. The current provision specifies that a qualifying offender may not reside within 500 feet of a child day care center, a primary, secondary or high school, or a public park that borders a school and is regularly used for school activities. The current provision also applies only to offenders convicted of rape, forcible sodomy, or object penetration of a child under the age of 13 when the crime was committed in conjunction with abduction, burglary or aggravated malicious wounding. Violation of residence restrictions would remain a Class 6 felony under the proposal.

Under both the current and proposed provisions, a person who has established a lawful residence is not in violation if a listed facility opens near his residence after his conviction. If a person established residency after the listed facility was established, he is required to move, regardless of how long he may have lived in that particular residence.

The General Assembly enacted § 18.2-370.3 in 2006 to prohibit an offender who has been convicted of certain offenses from residing within 500 feet of a school or child day center. The *Code* also contains several other provisions that prohibit certain offenders from being in proximity to children. Currently, it is a Class 6 felony under § 18.2-370.2 for adults convicted of specified offenses (e.g., kidnapping of a minor, rape, etc.) from loitering within 100 feet of a school. The 2006 General Assembly expanded this provision to cover child day centers. The 2006 General Assembly also added § 18.2-370.4, making it a Class 6 felony for certain sex offenders to work or volunteer at any school or child day center. In 2008, the General Assembly expanded the residence restrictions in § 18.2-370.3 to include any public park that borders a school and is regularly used for school activities.

Analysis:

According to the Circuit Court Automated Information System (CAIS) for fiscal years 2008 and 2009, there were no convictions for violations of § 18.2-370.3 during this time period. Additionally, no convictions for violations of § 18.2-370.3 were observed in Local Inmate Data System (LIDS) data for fiscal years 2009 and 2010.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of an existing felony, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The proposal expands the list of prohibited places where a qualifying offender may not reside. The number of additional felony convictions that may result from the proposal cannot be estimated; therefore, the magnitude of the impact cannot be determined.

Local adult correctional facilities. The proposal may also increase local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in additional felony convictions and subsequent supervision requirements, the proposal may affect adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. Convictions under the existing § 18.2-370.3 are not covered by the sentencing guidelines as the primary (most serious) offense. Such a conviction, however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be 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 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; therefore, Chapter 874 of the 2010 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.