



## Fiscal Impact Statement for Proposed Legislation

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### Virginia Criminal Sentencing Commission

#### House Bill No. 1271 (Patron – Jones)

LD#: 12104109

Date: 1/17/2012

Topic: Punishment of certain sexually violent predators

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$1,711,348 (62 beds)
- **Local Adult Correctional Facilities:**  
-\$14,997 (-1 bed)
- **Adult Community Corrections Programs:**  
Cannot be determined

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

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#### Summary of Proposed Legislation:

The proposed legislation amends §§ 18.2-61 (Rape), 18.2-67.1 (Forcible Sodomy), and 18.2-67.2 (Object Sexual Penetration), relating to penalties for certain sex crimes. The proposal seeks to impose a mandatory minimum sentence of life imprisonment when these crimes are committed against a victim under the age of 13. The offense need not be the offender's second or subsequent violent felony sexual assault conviction for the mandatory life sentence to apply; therefore, § 18.2-67.5:3 is modified accordingly. The proposed legislation also modifies § 19.2-303 to remove the option of post-release supervision with electronic monitoring for these offenders.

The proposal amends § 19.2-169.3 so that "unrestorably incompetent" defendants charged with a sexually violent offense would be reviewed for commitment pursuant to procedures set forth in §§ 37.2-903 and 37.2-904. These individuals would then be assessed similarly to those eligible for civil commitment under Chapter 9 of Title 37.2. The local Commonwealth's attorney and the Commissioner of Behavioral Health and Developmental Services would be charged with providing any information relevant to the review to the Director of the Department of Corrections (DOC).

The proposal also amends §§ 37.2-903 and 37.2-904 to change the way sexually violent offenders are reviewed for commitment. Currently, the Director reviews DOC's database of sexually violent prisoners monthly, identifying offenders scheduled for release from prison within 10 months with a qualifying score of four or more on the Static-99 scale or on a similar risk assessment tool. Under the amended § 37.2-903, the Director would identify offenders scheduled for release from prison within 10 months or referred by the Virginia Parole Board. The Director, in coordination with the Office of the Attorney General and the Department of Behavioral Health and Developmental Services, shall develop a protocol consistent with the evidence-based best practices to assess whether the individual meets the definition of a sexually violent predator. The Director would then apply the assessment protocol to all defendants charged with a sexually violent offense, found unrestorably incompetent to stand trial pursuant to

§ 19.2-169.3, and referred by a court; those appearing to meet the definition of a sexually violent predator would have their information forwarded to the Commitment Review Committee (CRC) for assessment. Under the amended § 37.2-904, the CRC would then have 180 days to make its recommendation for possible commitment to the Attorney General; currently, the CRC has 120 days to make its decision.

Currently, felony sexual assaults under §§ 18.2-61, 18.2-67.1, and 18.2-67.2 are generally punishable by a term of imprisonment from five years to life. The 2006 General Assembly, however, added a mandatory minimum sentence of 25 years, which applies to offenses involving a victim younger than 13 years of age committed in conjunction with a kidnapping, burglary, or malicious wounding. If an offender is convicted under § 18.2-67.5:3 of a second or subsequent violent felony sexual assault, a mandatory life sentence applies.

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**Analysis:**

According to FY2010 and FY2011 Sentencing Guidelines (SG) data, a felony conviction for rape, forcible sodomy, or object sexual penetration involving a victim under the age of 13 was the primary (or most serious) offense in 228 sentencing events. Nearly all the offenders (94%) were sentenced to a state-responsible (prison) term. Ten of 215 prison commitments were sentenced to life imprisonment; for the remaining offenders sentenced to prison, the median sentence was 13 years. Six offenders (3%) received local-responsible (jail) terms with a median sentence of five months. The remaining offenders (3%) were sentenced to probation without an active term of incarceration.

According to FY2010 and FY2011 Circuit Court Automated Information System (CAIS) data, there was one possible case of object sexual penetration committed against a victim younger than 13 years of age in conjunction with a kidnapping, burglary, or malicious wounding. This offender was convicted of three counts and sentenced to 25 years imprisonment.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By creating new mandatory minimum sentences, the proposal is expected to have an impact on the future state-responsible (prison) bed space needs of the Commonwealth. The impact is estimated to be 62 beds statewide by FY2018. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$1,711,348.

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

FY13	FY14	FY15	FY16	FY17	FY18
2	9	18	30	43	62

**Local adult correctional facilities.** The proposal is expected to decrease local-responsible (jail) bed space needs, as some offenders who otherwise would receive local-responsible (jail) terms will, under the proposal, receive state-responsible (prison) sentences. The impact is estimated to be a decrease of approximately one bed statewide (state savings, \$14,997; local savings, \$16,052).

**Adult community corrections resources.** The proposal is not expected to increase the need for community corrections resources and will likely delay or eliminate the need for services for some offenders affected by the proposal, as they will be staying in prison longer.

**Virginia's sentencing guidelines.** The guidelines do not cover felony sexual assaults against a victim younger than 13 years of age committed in conjunction with a kidnapping, burglary, or malicious wounding when the offense is the primary (or most serious) offense in the case; however, such a conviction may augment the guidelines recommendation if the most serious offense at sentencing is

covered by the guidelines. The remaining felony sex offenses affected by the proposal are covered by the sentencing 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.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$1,711,348 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 2011.
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 2011.
3. Cost per prison bed was assumed to be \$27,688 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 FY2010 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.19 per day or \$10,296 per year. The local cost was calculated by using the daily expenditure cost of \$70.01 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 \$30.17 per day or \$11,020 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

**Assumptions relating to sentencing**

1. The impact of the proposed legislation, which would be effective on July 1, 2012, is phased in to account for case processing time.
2. 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, 2010. For sexual assault offenses, this rate was 11.1%.
3. It was assumed that prosecutors would charge all eligible offenders under the proposed higher felony penalties.
4. Offenders subject to the proposed mandatory minimum sentences were assumed to serve the mandatory terms specified in the proposal. If an offender was convicted of multiple counts, the mandatory terms were assumed to run consecutively.<sup>1</sup>

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<sup>1</sup> Recent analysis revealed that, in 96.9% of cases, judges set multiple mandatory minimum sentences to run consecutively (2010 Annual Report of the Virginia Criminal Sentencing Commission).