



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 964 (Patron – Bell)

LD #: 12103389

Date: 01/06/2012

Topic: Display of grooming video to minor

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:**
Cannot be determined, likely to be small
- **Juvenile Detention Facilities:**
Cannot be determined, likely to be small

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 890 of the 2011 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal adds § 18.2-374.4 to the *Code of Virginia* to make it a Class 6 felony for any person to show a minor a sexually-related “grooming” video. A grooming video is defined in the proposal as (i) a videographic cartoon depicting a child or young adult engaged in a sex act in which the child or young adult is portrayed as enjoying the experience and which may be used to encourage a child to engage in a sex act with an adult or the production of child pornography; (ii) child pornography; or (iii) sexually explicit visual material of actors portraying adults displayed to a child less than 13 years of age. Violation of the proposed section constitutes a separate and distinct offense and prosecution under this section shall not prohibit prosecution under any other provision of the *Code*.

Analysis:

The proposal defines a new crime that is not delineated in current *Code*. The crime of indecent liberties, as defined in § 18.2-370, may be similar in some respects to the proposed offense. Under § 18.2-370, it is a Class 5 felony for any person 18 years of age or over to take indecent liberties with a child under the age of 15. Indecent liberties is defined by § 18.2-370 as the: 1) exposure of sexual parts to a child or proposal that a child expose his sexual parts, 2) proposal that a child fondle the offender’s sexual parts or proposal that the offender fondle the child’s sexual parts, 3) proposal that the child perform an act of sexual intercourse or any act under § 18.2-361 (bestiality or non-forcible sodomy), or 4) the enticement, etc., of a child to enter a vehicle, house, etc., for any purpose specified above.

According to Sentencing Guidelines data for fiscal year (FY) 2010 and FY2011, 106 offenders were convicted of a Class 5 felony under § 18.2-370(A) for indecent liberties with a child under age 15 (as the primary, or most serious, offense). More than half (52%) of these offenders received a state-responsible (prison) term, for which the median sentence was 3.0 years. Another 32% were given a

local-responsible (jail) term with a median sentence of 9.5 months. The remaining 16% were not given an active term of incarceration to serve.

Another part of the proposal defines child pornography as a “grooming” video. According to the Sentencing Guidelines Database (SG) for fiscal year (FY) 2010 and FY2011, 169 offenders were convicted of producing, reproducing, or distributing child pornography (in violation of §§ 18.2-374.1 or 18.2-374.1:1) or soliciting a minor via the internet (in violation of § 18.2-374.3). In these cases, one of these crimes was the primary (or most serious) offense at sentencing. Overall, 18% of these offenders received probation without an active term of incarceration, 22% received a local-responsible (jail) term with a median sentence of 6.0 months, and 60% received a state-responsible (prison) term with a median sentence of 5.0 years.

During the same two-year period, 113 offenders were convicted of a Class 5 or 6 felony under § 18.2-374.1:1 for possessing child pornography (as the primary offense). Of these, 27% received probation without an active incarceration term to serve, 28% received a local-responsible (jail) term with a median sentence of 3.0 months, and 45% received a state-responsible (prison) term with a median sentence of 3.0 years.

Data are not sufficient to determine the type of and number of convictions for offenders who display sexually explicit visual material of actors portraying adults to a child less than 13 years of age.

Regarding the Department of Juvenile Justice (DJJ), Court Service Units serve as the point of entry into the juvenile justice system. An “intake” occurs when a juvenile is brought before a court service unit officer for one or more alleged law violations. The Department of Juvenile Justice reports averaging 7 intake petitions a year for the three most recent fiscal years (FY2009 to FY2011) for a violation of subsection C of § 18.2-374.1:1 of the *Code* by a person under the age of 18. From FY2009 to FY2011, one juvenile was committed to the Department for a violation of subsection C of § 18.2-374.1:1 of the *Code* by a person under the age of 18.

Impact of Proposed Legislation:

State adult correctional facilities. By creating a new Class 6 felony offense and not prohibiting prosecution under another provision, the proposal could increase the state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not provide sufficient detail to estimate the number of additional felony convictions likely to result from enactment of the proposal. Therefore, the impact of the proposal cannot be determined.

Local adult correctional facilities. Similarly, the proposal may 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 felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections programs cannot be quantified.

Virginia’s sentencing guidelines. As a new offense, a conviction under § 18.2-374.4 would not be covered by the sentencing guidelines as the primary (most serious) offense. Conviction for such an offense, 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. It is possible that a person under the age of 18 could be adjudicated delinquent for an offense relating to the display of a grooming video to a minor. In such an event, an adjudication for a Class 6 felony offense in juvenile and domestic relations district court would make that person eligible for commitment to a juvenile correctional center pursuant to subsection (A)(14) of § 16.1-278.8 of the *Code*. While the impact of the proposal on juvenile correctional center bed space needs cannot be determined, the impact, if any, is expected to be small.

Juvenile detention facilities. It is possible that a person under the age of 18 could be charged with an offense relating to the display of a grooming video to a minor. In such an event, an alleged Class 6 felony offense could subject that person to pre-trial detention in a juvenile detention facility pursuant to § 16.1-248.1. If the person is adjudicated delinquent for a Class 6 felony offense in juvenile and domestic relations district court, that person would be eligible for placement in a post-dispositional detention program pursuant to § 16.1-284.1. The impact of the proposal on the bed space needs of juvenile detention facilities cannot be determined; however, any impact is expected to be small.

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 890 of the 2011 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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