



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 96 (Patron – Edwards)

LD #: 12101224

Date: 12/14/2011

Topic: Publication of video/still image from unlawful filming, etc.

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 expands § 18.2-386.1 to make it a Class 6 felony to publish a videographic or still image record, via the Internet, if it was obtained unlawfully as described in subsection A of the same statute. The proposal also expands the venue by amending § 19.2-249.2.

Currently, subsection A of § 18.2-386.1 states that it is unlawful to knowingly and intentionally videotape, photograph, or film any nonconsenting person if that person is i) totally or partially nude, ii) the videotape, etc., is created by placing the lens in a position directly beneath or between a person's legs in order to capture an image of the person's intimate parts or undergarments, or iii) the person being videotaped, etc., would have reasonable expectation of privacy. This offense is punishable as a Class 1 misdemeanor or, if the victim is under the age of 18, a Class 6 felony. A third or subsequent offense under § 18.2-386.1 within 10 years (each offense having occurred on a different date and the offender having been at liberty in between each conviction) is a Class 6 felony.

Subsection (ii) of § 18.2-386.1(A), capturing an image from beneath or between a person's legs, was added to the *Code* in 2005. The Class 6 felony for a third or subsequent offense (§ 18.2-386.1(E)) was added in 2008.

Analysis:

According to FY2010 and FY2011 data from the General District Court Automated Information System (CAIS), 29 offenders were convicted of a misdemeanor violation of § 18.2-386.1. More than half (55%) received a local-responsible (jail) sentence with a median sentence of two months.

According to the Circuit Court Automated Information System (CAIS) for FY2010 and FY2011, there

were eight offenders convicted of videotaping, filming, photographing, etc., a minor and one convicted of a third or subsequent offense under § 18.2-386.1. All received a state-responsible (prison) term, for which the median sentence was 1.5 years.

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. DJJ reports an average of roughly four intakes per year for the three most recent fiscal years (FY2009 to FY2011) for a violation of § 18.2-386.1 by a person under the age of 18. According to DJJ, there were no commitments to juvenile correctional centers during the three-year period in which a violation of § 18.2-386.1 was the most serious committing offense.

Impact of Proposed Legislation:

State adult correctional facilities. By creating a new Class 6 felony offense, 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. Convictions under § 18.2-386.1 are not 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. According to the Department of Juvenile Justice (DJJ), it is possible that a person under the age of 18 could be subject to the provisions of the proposed legislation. In such an event, an adjudication for a Class 6 felony 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 of Virginia*. Therefore, the legislative proposal may have an impact on juvenile correctional center bed space needs. The actual impact on juvenile correctional center bed space needs cannot be determined, but is likely to be small.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that it is possible that a person under the age of 18 could be subject to the provisions of the proposed legislation. In such an event, the person could be subject to pre-trial detention in a juvenile detention facility pursuant to § 16.1-248.1. In addition, an adjudication for a Class 6 felony in juvenile and domestic relations district court would make that person eligible for post-dispositional detention under § 16.1-284.1. Therefore, the legislative proposal may have an impact on juvenile detention bed space needs. Although the actual impact on juvenile detention bed space needs cannot be determined, it is likely 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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