Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1745
(Patron – Gilbert)

LD#: 13101866 **Date:** 12/7/2012

Topic: Electronic solicitation of 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:** 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 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of $50,000.

Summary of Proposed Legislation:

Currently, § 18.2-374.3(C)(2) prohibits adults from using print or electronic communications (including, but not limited to, telecommunications devices, internet, radio, etc.) to propose, with lascivious intent, that a child believed to be less than 15 years old:

- feel or fondle the sexual or genital parts of the adult making the proposal; or
- that the adult making the proposal feel or fondle the sexual or genital parts of the child.

A violation of § 18.2-374.3(C) is a Class 5 felony. The existing provisions contain penalty enhancements if the offender is at least seven years older than the victim. For a first violation by an adult who is at least seven years older than the victim, the statutory maximum penalty is increased to 30 years and a five-year mandatory minimum term of incarceration is required. For a subsequent conviction under this subsection by an adult who is at least seven years older than the victim, the penalty is increased to 40 years imprisonment, with a ten-year mandatory minimum term of incarceration.

The proposal expands § 18.2-374.3(C)(2) to include situations in which an adult proposes that a child, believed to be less than 15 years old, feel or fondle his own sexual or genital parts. The existing penalties under this subsection would apply to violations of the proposal.

By extension, the proposal also expands § 18.2-374.3(D) to include situations in which an adult proposes that a child at least 15 years old but less than 18 years old feel or fondle his own sexual or genital parts. A violation of § 18.2-374.3(D) by an adult who is at least seven years older than the victim is a Class 5 felony. For a subsequent conviction under this subsection, the statutory maximum penalty is increased to 20 years imprisonment, with a one-year mandatory minimum term of incarceration.

Analysis:

According to Sentencing Guidelines data for fiscal years 2011 and 2012, 86 offenders were convicted of using print or electronic communications to propose a sex act with a child less than 15 years old. This offense was the primary, or most serious, offense in 81 of the cases. Of these cases, 76.5% received a state-responsible (prison) term, for which the median sentence was five years. Of the remaining cases, 11.1% did not receive an active term of incarceration, while 12.3% were sentenced to a local-responsible (jail) term, with a median sentence length of nearly six months.

In addition, 20 offenders were convicted of using print or electronic communications to propose a sex act with a child at least 15 years old but less than 18 years old. This offense was the primary offense in all 20 cases. Of these cases, 25% of the offenders did not receive an active term of incarceration, while 30% were sentenced to a local-responsible (jail) term, with a median sentence length of 3.5 months. The remaining 45% received a state-responsible (prison) term, for which the median sentence was 6.5 years.

Impact of Proposed Legislation:

State adult correctional facilities. Because it prohibits an additional type of sexual fondling that is not currently specified in the statute, and because the mandatory minimum terms of incarceration would apply to the additional behavior, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. It is unknown how many additional convictions would be likely to occur under the proposed modifications to § 18.2-374.3. Consequently, the impact of the proposal cannot be determined.

Local adult correctional facilities. Similarly, this proposal may increase future local-responsible (jail) bed space needs. However, it is unknown how many additional convictions would be likely to occur under the proposed statute and whether the proportion sentenced to a jail term would be similar to the existing statute. Consequently, the impact of this proposal on local adult correctional facilities cannot be determined.

Adult community corrections programs. Since the proposal could result in additional felony convictions and subsequent supervision requirements for some offenders, the proposal may increase the need for adult community corrections resources. However, since it is not possible to estimate the number of additional convictions that would result under the proposed statute or the proportion of those convicted who would be subject to supervision requirements, the potential impact on community corrections resources cannot be determined.

Virginia's sentencing guidelines. Currently, the sentencing guidelines cover use of a communications system to propose a sex act to a minor under § 18.2-374.3. This proposal would add a third type of sexual fondling to the existing statute, but would not constitute a separate new offense. Consequently, the proposed amendment would be covered under the existing guidelines. No adjustment to the guidelines is necessary under the proposal at this time. Guidelines would be monitored to determine whether any modification would be necessary in the future.

Juvenile correctional centers. The Department of Juvenile Justice (DJJ) reports that, while this proposal may cause a limited increase in commitments, the impact of this proposal on bed space needs for juvenile correctional centers cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that this proposal's impact on detention center bed space cannot be determined.

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 3 of the Acts of Assembly of 2012, Special Session I, 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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