



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 1745

#### *Amendment in the Nature of a Substitute (Patron Prior to Substitute – Gilbert)*

LD#: 13104454

Date: 1/23/2013

Topic: Electronic solicitation of children and indecent liberties

#### 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.

The proposal also modifies § 18.2-370, relating to taking indecent liberties with children, to include proposing that a child under the age of 15 years feel or fondle his own sexual or genital parts. Under § 18.2-370(A), taking indecent liberties with a child is punishable as a Class 5 felony. However, a second or subsequent violation of § 18.2-370 is punishable as a Class 4 felony. In addition, pursuant to § 18.2-370(D), a parent, step-parent, grandparent or step-grandparent who commits indecent liberties with a minor who is at least 15 but less than 18 years of age is guilty of a Class 5 felony. If the child is younger than 15 years of age, the offense is punishable as a Class 4 felony.

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**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, 12.3% were sentenced to a local-responsible (jail) term, with a median sentence length of nearly six months, while 11.1% did not receive an active term of incarceration to serve after sentencing.

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.

Sentencing Guidelines data for fiscal year FY2011 and FY2012 also indicate that 196 offenders were convicted of a Class 5 felony under § 18.2-370(A) for indecent liberties with a child under age 15. The indecent liberties conviction was the primary, or most serious, offense in 109 of the cases. More than half (58.7%) of these offenders received a state-responsible (prison) term, for which the median sentence was two years. Another 27.5% were given a local-responsible (jail) term with a median sentence of six months. The remaining 13.8% were not given an active term of incarceration to serve after sentencing.

Circuit Court Case Management System<sup>1</sup> data for this time period indicate that a felony violation of § 18.2-370(D) for taking indecent liberties with a child by a parent or grandparent was the primary, or most serious, offense in 12 cases. The majority (83.3%) of these offenders were sentenced to a state-responsible (prison) term with a median sentence of two years. One additional offender received a jail sentence of six months and another did not receive an active term of incarceration to serve after sentencing.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Because it prohibits an additional type of sexual fondling that is not currently specified in §§ 18.2-370 and 18.2-374.3, and because the mandatory minimum terms of incarceration under § 18.2-374.3 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 these statutes. Consequently, the impact of the proposal cannot be determined.

**Local adult correctional facilities.** Similarly, the proposal could also increase the local-responsible (jail) bed space needs of the Commonwealth. However, the magnitude of the impact cannot be determined.

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<sup>1</sup> Formerly referred to as the Court Automated Information System (CAIS).

**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 estimated, 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 and indecent liberties under § 18.2-370(A). This proposal would add a third type of sexual fondling to the existing statutes, but this 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 of juvenile correctional centers cannot be determined.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal's impact on detention center bed space will be limited; however, the exact impact cannot be determined.

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**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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