



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1130 (Patron – Norment)

LD#: 13103158

Date: 1/3/2013

Topic: Incest

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
- **Juvenile Detention Facilities:**
Cannot be determined

* 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:

The proposal expands the applicability of § 18.2-366(B), relating to incest, to include individuals who engage in sexual intercourse with their step-child, step-grandchild, step-parent, or step-grandparent. Currently, § 18.2-366(B) only prohibits sexual intercourse between parents/grandparents and children/grandchildren. The proposed § 18.2-366(C) mirrors existing language in § 18.2-361(C), which clarifies that the penalties for sodomy among family members apply to step-relationships.

Under § 18.2-366, adultery and fornication by persons forbidden to marry and incest are punishable as either a misdemeanor or a felony, depending on the nature of the relationship. If the adultery or fornication is committed by those forbidden to marry, the offense is punishable as a Class 1 misdemeanor. If the victim is the offender's daughter, granddaughter, son, grandson, father, or mother, the offense is a Class 5 felony. However, if a parent or grandparent commits adultery or fornication with their child or grandchild, age 13 to 17, the offense is punishable as a Class 3 felony. Additionally, under § 18.2-61, sexual intercourse with a child younger than 13 years old, regardless of the relationship between the victim and offender, is punishable by 5 years to life imprisonment.

Currently, any adult who engages in consensual sexual intercourse with a minor 13 or 14 years old is guilty of a Class 4 felony under § 18.2-63(A). If the child is between the ages of 15 and 17 and the offender is not the victim's parent or grandparent, the offense is punishable as a Class 1 misdemeanor, pursuant to § 18.2-371. Engaging in sexual intercourse with an adult who is not one's spouse (and the relationship is not covered by § 18.2-366) is punishable as either fornication (§ 18.2-344) or adultery (§ 18.2-365), depending on the marital status of the offender.

Analysis:

Available data do not contain sufficient detail to determine the number of cases that would be affected by the proposal. However, affected offenders may be sentenced similarly to those who are currently convicted of a felony for incest under the existing § 18.2-366(B).

According to Sentencing Guidelines data for fiscal years 2011 and 2012, all of the offenders whose primary, or most serious, offense was incest with an adult daughter, granddaughter, son, grandson, father, or mother were sentenced to a state-responsible (prison) term. The prison sentences for these offenders ranged from two to ten years, with a median sentence of six years. When the primary offense was incest with one's own child or grandchild between the ages of 13 and 17, the majority (80%) of offenders received prison sentences ranging from 2.5 to 20 years, with a median sentence of 10.5 years. The remaining 20% (one offender) did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. Since the proposal would increase the applicability of an existing felony offense, the proposal could increase the state-responsible (prison) bed space needs of the Commonwealth. However, the number of additional felony convictions that may result from the proposal cannot be estimated; therefore, the magnitude of the impact cannot be determined.

Local adult correctional facilities. Similarly, the proposal may increase local-responsible (jail) bed space needs; however, 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 resources cannot be determined.

Virginia's sentencing guidelines. The sentencing guidelines cover felony violations of § 18.2-366(B) handled in Virginia's circuit courts. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice, the proposal may have an impact on juvenile correctional center bed space needs. However, the actual impact on juvenile correctional center bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that, while the proposal may have an impact on juvenile detention bed space needs, the actual impact on juvenile detention facilities 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.