



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 801 **(Patron – Garrett)**

LD #: 13100931

Date: 11/27/2012

Topic: Punishment for third misdemeanor sex offense

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:

Currently, § 18.2-67.5:1 enhances the penalty for misdemeanor attempted sexual battery, sexual battery, consensual intercourse with a child, indecent exposure, or peeping from a Class 1 misdemeanor to a Class 6 felony if it is alleged in the indictment, etc., that the offender has previously been convicted of two or more of the listed offenses within ten years of the current offense. The proposal expands the list of prior offenses that make an offender eligible for the felony enhancement to include federal convictions, convictions in another state or territory of the United States, and convictions in the District of Columbia for similar offenses. Under the proposal, the penalty for a third or subsequent misdemeanor conviction remains a Class 6 felony.

Analysis:

Section 18.2-67.5:1 states that offenders who are convicted of a third or subsequent offense for certain misdemeanor sex crimes, including attempted sexual battery, sexual battery, consensual intercourse with a child, indecent exposure, and peeping, can be charged with a Class 6 felony. By expanding prior convictions to include similar offenses outside of Virginia, the proposal may increase the number of offenders convicted of a felony for a third or subsequent misdemeanor offense under § 18.2-67.5:1. According to fiscal year (FY) 2011 and FY2012 data from the Circuit Court Automated Information System (CAIS), a felony violation of § 18.2-67.5:1 was the primary, or most serious, offense in 16 sentencing events. More than half (56%) of offenders received a state-responsible (prison) term, with a median sentence of one year, while nearly a third (31%) received a local-responsible (jail) term with a median sentence of six months. The remaining two offenders did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. Since the proposal expands prior convictions to include similar convictions in jurisdictions outside Virginia, the proposal may increase the number of offenders convicted of a felony for a third or subsequent misdemeanor sexual offense under § 18.2-67.5:1. As a result, the proposal could increase the future state-responsible (prison) bed space needs of the Commonwealth. However, data are not sufficiently detailed to estimate how many additional felony convictions may result if the proposal is enacted. Therefore, the magnitude of the impact cannot be quantified.

Local adult correctional facilities. Similarly, the magnitude of the impact on local-responsible (jail) bed space needs cannot be quantified.

Adult community corrections resources. Because the proposal could result in additional 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 quantified.

Virginia's sentencing guidelines. Felony convictions under § 18.2-67.5:1 are not covered by the sentencing guidelines as the primary (most serious) offense in a case; however, a conviction under this provision may 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. The Department of Juvenile Justice reports the impact of this proposal on bed space needs for juvenile correctional centers cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that this proposal's impact on detention center bed space needs 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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