



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 326 (Patron – Bell, Robert B.)

LD#: 14101850

Date: 12/15/2013

Topic: Unlawful dissemination or sale of images of another

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 806 of the 2013 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal adds § 18.2-386.2 to the *Code of Virginia*, relating to the unlawful dissemination or sale of images of another. The proposal would make it unlawful for a person, with the intent to coerce, harass, or intimidate, to maliciously disseminate or sell, without license or authorization, any videotape, photograph, film, or other videographic or still image depicting another person who is totally nude, engaging in sexual conduct, or that exposes the genitals, pubic area, buttocks or female breast. The offense would be punishable as a Class 1 misdemeanor or, if the subject of the depiction is under the age of 18, a Class 6 felony.

Currently, § 18.2-386.1 makes it a Class 1 misdemeanor to record such images without the consent of the person depicted. Recording such images depicting a person under the age of 18 is a Class 6 felony.

Analysis:

Existing data do not contain sufficient detail to determine the number of misdemeanor or felony convictions for disseminating images that may result from enactment of the proposal. However, sentencing for the proposed misdemeanor and felony offenses may be similar to sentences given for the unlawful recording of images under the existing § 18.2-386.1.

According to General District Court Case Management System (CMS)¹ data for fiscal year (FY) 2012 and FY2013, 41 offenders were convicted of a misdemeanor for recording images under § 18.2-386.1. More than half of these offenders (56.1%) were sentenced to a local-responsible (jail) sentence, with a median sentence length of 1.3 months. The remaining offenders did not receive an active term of incarceration to serve after sentencing.

¹ Formerly referred to as the Court Automated Information System (CAIS).

Circuit Court CMS data for FY2012 and FY2013 indicate that 14 offenders were convicted of a felony under § 18.2-386.1 for videotaping, filming, photographing, etc., a minor during this time period. This offense was the primary, or most serious, offense in 11 cases. In the 11 cases, two offenders (18.2%) were sentenced to state-responsible (prison) terms, for which the median sentence was 2.3 years. Five offenders (45.5%) were given local-responsible (jail) terms, with a median sentence of ten months. The remaining four offenders (36.4%) did not receive an active term of incarceration to serve after sentencing.

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. Because it defines a new misdemeanor as well as a new felony offense, the proposal may also increase local-responsible (jail) bed space needs. However, the magnitude of the impact cannot be determined.

Adult community corrections programs. As the proposal could result in felony and/or misdemeanor convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for state and local 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. Because the proposal defines a new felony offense, convictions under the proposed section of the *Code* would not be covered by the sentencing guidelines as the primary, or most serious, offense. Such a conviction, however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines is necessary under the proposal.

Juvenile correctional centers. The Department of Juvenile Justice (DJJ) reports that, while this proposal could cause an 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 806 of the 2013 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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