



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 14

(Patron – Garrett, T.)

LD#: 14100407

Date: 11/09/2013

Topic: Non-forcible sodomy

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:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

* 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 proposed legislation amends § 18.2-361(A), relating to non-forcible sodomy. On March 12, 2013, the United States Court of Appeals for the 4th Circuit issued a decision (*MacDonald v. Moose*, 2013) regarding the constitutionality of Virginia's general prohibition against non-forcible sodomy under § 18.2-361(A). In this case, the court ruled that the portion of § 18.2-361 relating to non-forcible sodomy is unconstitutional because it prohibits sodomy between two individuals without any qualification, which facially violates the Due Process Clause of the Fourteenth Amendment and is inconsistent with existing precedent. Virginia's Attorney General filed a petition for a writ for certiorari in the Supreme Court of the United States, which was denied on October 7, 2013.

The proposal clarifies that the prohibition against non-forcible sodomy contained in § 18.2-361(A) does not apply in cases where all persons are consenting adults who are not in a public place and who are not involved in prostitution-related activities. The proposal includes an enactment clause indicating that the provisions of the act are declarative of existing law. The proposal may remedy the issues expressed in *MacDonald v. Moose* (2013). Under § 18.2-361(A), non-forcible sodomy is a Class 6 felony and is punishable by up to five years imprisonment.

Analysis:

According to fiscal year (FY) 2012 and FY2013 Sentencing Guidelines data, 56 offenders were sentenced for non-forcible sodomy in violation of § 18.2-361(A) during this time period. The sodomy conviction was the primary, or most serious, offense in 30 of the cases (see table below). In those 30 cases, 43% of the offenders received a state-responsible (prison) term, with a median sentence of two years. Another 30% were sentenced to a local-responsible (jail) term, with a median sentence of six months, while the remaining 27% did not receive an active term of incarceration to serve after sentencing.

The number of offenders sentenced for non-forcible sodomy declined significantly in FY2013. Currently, no individuals may be convicted for non-forcible sodomy under § 18.2-361(A) due to the Court's decision in *MacDonald v. Moose* (2013).

**Felony Sentencing Events Involving
Non-Forcible Sodomy § 18.2-361(A)**

Fiscal Year	As Primary Offense (Most Serious)	As Additional Offense	Total
FY2012	22	14	36
FY2013	8	12	20
Total	30	26	56

Impact of Proposed Legislation:

State adult correctional facilities. By remedying the issues expressed in *MacDonald v. Moose* (2013), the proposal would allow for felony prosecutions and convictions under § 18.2-361(A) for non-forcible sodomy to resume. Until the effective date of such legislation, however, there will be a period of time during which no one will be convicted under the existing statute. Thus, the proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth above current needs. The rate at which charges would be filed and individuals would be prosecuted under the proposed legislation cannot be estimated; therefore, the magnitude of the impact on prison bed space needs during the six-year forecast horizon 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 new felony convictions and subsequent supervision requirements for some offenders, the proposal may increase the need for adult community corrections resources. The potential impact on community corrections programs, however, cannot be determined.

Virginia's sentencing guidelines. The sentencing guidelines cover felony violations of § 18.2-361(A) that are processed 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 is not expected to increase juvenile correctional center bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.