



## Fiscal Impact Statement for Proposed Legislation

### *Virginia Criminal Sentencing Commission*

#### House Bill No. 1526

(Patron – Berg)

LD #: 15101676

Date: 1/2/2015

Topic: Use of communications systems to facilitate offenses involving children

#### 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\*\*

\*\* Provided by the Department of Juvenile Justice

\* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the 2014 Acts of Assembly, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

#### Summary of Proposed Legislation:

The proposed legislation amends § 18.2-374.3, relating to the use of a communications system to facilitate certain offenses against children. Currently, under § 18.2-374.3, it is unlawful for any person 18 years of age or older to use a communications system (e.g., a computer) to solicit a child for the purposes of committing certain acts, such as exposing his sexual parts to the child, or proposing that the child engage in certain acts, such as sexual intercourse. Maximum penalties for violations range from 5 to 40 years depending on the age of the victim, the age difference between the victim and the offender, and whether or not the offender has prior convictions for the same offense. Mandatory minimum sentences apply in certain instances.

While the existing provision applies to offenders age 18 or older, the proposal defines new offenses applicable to persons under the age of 18 who commit such acts. As proposed, any person under the age of 18 who uses a communications system to solicit a child under the age 13 would be guilty of a Class 5 felony. Any person under the age of 18 who solicits a child who is at least 13 but less than 15 years of age would be guilty of a Class 1 misdemeanor if the offender is at least three years older than the child he solicits. Currently, under § 18.2-370.01, a juvenile over the age of 13 who knowingly and intentionally exposes his sexual or genital parts to any child under the age of 14 is guilty of a Class 1 misdemeanor if the victim is at least five years the accused's junior. Juveniles over the age of 13 who propose that the child expose his or her sexual or genital parts are also guilty of a Class 1 misdemeanor under § 18.2-370.01.

Persons under the age 18 who are charged with a criminal offense are prosecuted in juvenile and domestic relations (JDR) court or, under certain circumstances, in circuit court. Section 16.1-269.1 outlines the criteria and procedures for transferring juveniles who are at least 14 years of age to circuit

court for trial as adults. Per § 16.1-269.1(A), for any offense that would be a felony if committed by an adult, the Commonwealth's Attorney has the discretion to request a transfer hearing. The juvenile court may retain jurisdiction or, if certain conditions are satisfied, approve the transfer of the juvenile to circuit court. Moreover, pursuant to § 16.1-271, any juvenile who has been tried and convicted in a circuit court as an adult must be treated as an adult for any subsequent criminal proceeding.

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**Analysis:**

The proposal creates a new Class 5 felony offense applicable to juveniles. Existing data sources do not contain sufficient detail to determine the number of instances in which a juvenile would be subject to the proposed felony offense. However, juveniles transferred to circuit court and convicted as adults under the proposed modifications to the *Code* may be sentenced similarly to offenders convicted under the existing provisions of § 18.2-374.3(C).

According to fiscal year (FY) 2013 and FY2014 Sentencing Guidelines data, 64 adults were convicted of a felony under § 18.2-374.3(C) for using a communications system to facilitate an offense involving a child under age 15, where the offender was less than seven years older than the child. This Class 5 felony was the primary, or most serious, offense in 59 of the cases. More than half (54.2%) of these offenders received a state-responsible (prison) term with a median sentence of three years. Another 22.0% were given a local-responsible (jail) term, for which the median sentence was three months. The remaining 23.7% did not receive an active term of incarceration to serve after sentencing.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposal creates a new felony offense under § 18.2-374.3 applicable to juvenile offenders, some of whom may be transferred to circuit court for trial as adults. Circuit court judges can employ a number of sentencing options that are not available to juvenile court judges, including incarceration in adult prison and jail facilities. In this way, the proposed legislation may increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing data do not provide sufficient detail to estimate the number of additional juveniles who may be convicted in circuit court and sentenced to prison in the future.

In addition, per § 17.1-805(C), convictions under § 18.2-374.3 are classified as violent offenses for the purposes of Virginia's sentencing guidelines. Offenders with prior convictions for violent felony offenses listed in § 17.1-805(C) receive "enhancements" on the guidelines that increase the recommended sentences for those offenders. Overall, Virginia's circuit court judges comply with the sentencing guidelines recommendations in nearly 80% of the felony cases before them. Thus, the proposal may result in longer prison terms for some offenders. However, the number of offenders who, in the future, would receive longer sentence recommendations because of the proposal is unknown.

For these reasons, the impact of the proposal on prison bed space needs cannot be determined.

**Local adult correctional facilities.** The proposal could also increase local-responsible (jail) bed space needs; however, the size of the impact cannot be determined.

**Adult community corrections programs.** Because the proposal could result in convictions in circuit court with subsequent supervision requirements for the offenders, the proposal may have an impact on adult community corrections programs. Since the number of cases cannot be estimated, the potential impact on community corrections resources cannot be determined.

**Virginia's sentencing guidelines.** As a new felony, a conviction for the proposed offense would not be covered by the sentencing guidelines when this crime is the primary (most serious) offense. A conviction

for such an offense, however, could 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.** According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

**Juvenile detention facilities.** According to the Department of Juvenile Justice (DJJ), the effect of the proposal on the bed space needs of juvenile detention facilities 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 2 of the 2014 Acts of Assembly, 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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