



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1533 (Patron – Wright)

LD#: 15101625

Date: 12/30/2014

Topic: Obscene sexual display

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$207,232 (7 beds)
- **Local Adult Correctional Facilities:**
At least -\$5,135 (less than one bed)
- **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

Summary of Proposed Legislation:

The proposal modifies § 18.2-67.5:1, relating to certain misdemeanor sex offenses. Currently, under § 18.2-67.5:1, the penalty for sexual battery, attempted sexual battery, consensual intercourse or sodomy with a child, indecent exposure, or peeping is a Class 1 misdemeanor. A third conviction for any of the listed offenses (or any combination of the offenses) within 10 years is a Class 6 felony. The proposal adds the act of engaging in an obscene sexual display in violation of § 18.2-387.1 to the list of misdemeanors for which a third offense within 10 years could be elevated to a Class 6 felony.

Analysis:

During fiscal year (FY) 2013 and FY2014, 138 offenders were convicted of a misdemeanor under § 18.2-387.1 for engaging in an obscene sexual display (in these cases, this offense was the primary, or most serious, offense at sentencing). These data include cases handled in general district court, juvenile and domestic relations court, and circuit court. Examining court data for calendar year 2005 through FY2014 reveals that at least nine of these offenders had two prior convictions for engaging in an obscene sexual display or any of the misdemeanor sex offenses currently listed in § 18.2-67.5:1, or any combination thereof, with the offenses committed on separate dates. Eight of these offenders received local-responsible (jail) terms, with a median sentence of 6.5 months; one offender did not receive an active term of incarceration to serve after sentencing.

Under the proposal, affected offenders would be subject to the Class 6 felony defined in § 18.2-67.5:1 for their third conviction, instead of a Class 1 misdemeanor. These offenders may be sentenced similarly to individuals currently convicted of the Class 6 felony in § 18.2-67.5:1. According to FY2013 and FY2014 data from the Circuit Court Case Management System (CMS), the majority (73%) of offenders convicted of this Class 6 felony were given a state-responsible (prison) term with a median

sentence of 1.8 years. Another 23% were given a local-responsible (jail) term, for which the median sentence was six months. The remaining 4% did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of an existing felony offense, the proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth in two ways. First, offenders who are convicted of a misdemeanor for engaging in an obscene sexual display under § 18.2-387.1 who subsequently commit two other offenses listed in § 18.2-67.5:1 would be subject to a felony penalty. The felony penalty would also apply to offenders who commit a violation of § 18.2-387.1 who have previously been convicted of two or more misdemeanor sex offenses. Existing data sources do not contain sufficient detail to identify all cases that would be affected by the proposal. However, based on data currently available to the Commission, the impact on state-responsible (prison) beds is estimated to be at least seven beds by FY2021. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$207,232.

Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY16	FY17	FY18	FY19	FY20	FY21
3	5	5	6	6	7

Local adult correctional facilities. The proposal is expected to decrease the future need for local-responsible (jail) beds, as some offenders would serve a prison term instead of a jail term. The impact on local-responsible (jail) beds is estimated to be less than one bed by FY2021 (state savings: \$5,135; local savings: \$7,404).

Adult community corrections programs. Raising a crime from a Class 1 misdemeanor to a Class 6 felony may decrease the demand for local community-based probation services and increase the need for state community corrections resources. The *Code of Virginia*, however, allows judges to utilize local community-based probation programs for Class 5 and Class 6 felons as well as misdemeanants. Data are not available to estimate the impact on local or state community corrections resources that may result from the proposal.

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. According to the Department of Juvenile Justice, the impact of the proposal on bed space needs for juvenile correctional centers cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the 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 is at least \$207,232 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

Assumptions underlying the adult state-responsible and local-responsible analyses include:

General Assumptions

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety's Committee on Inmate Forecasting in 2014.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety's Committee on Inmate Forecasting and approved in 2014.
3. Cost per prison bed was assumed to be \$30,397 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*
4. Cost per jail bed was based on The Compensation Board's FY2013 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.51 per day or \$10,413 per year. The local cost was calculated by using the daily expenditure cost of \$73.60 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$41.11 per day or \$15,015 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2015, is phased in to account for case processing time.
2. To gauge the impact on sentencing, it was assumed that the distribution of sentences for the affected cases will be similar to the distribution of sentences under the existing Class 6 felony provision for a third or subsequent sex offense under § 18.2-67.5:1.
3. It was assumed that prosecutors would charge all eligible offenders under the proposed felony enhancement.
4. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2013. For sex offenses, this rate was 10.1%.

Limitations

1. The Circuit Court Case Management System excludes cases from Fairfax, Alexandria, or Virginia Beach.
2. The Juvenile and Domestic Relations District Court (JDR) data used for the current analysis only include adults convicted in JDR.

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