



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 709 (Patron – Edwards)

LD#: 15100896

Date: 11/26/2014

Topic: Publication of video/still image from unlawful filming, etc.

#### 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 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 proposal expands § 18.2-386.1 to make it a Class 6 felony to unlawfully create a videographic or still image and then publish it on the Internet. The proposal also amends § 19.2-249.2 to expand venue for violations of § 18.2-386.1 to parallel venue established for violations of the Virginia Computer Crimes Act (§ 18.2-152.1 et seq.).

Currently, subsection A of § 18.2-386.1 states that it is unlawful to knowingly and intentionally create any videographic or still image of a nonconsenting person if that person is i) nude or in a state of undress in a restroom, dressing room, locker room, etc., or ii) the image is created by placing the lens in a position directly beneath or between a person's legs in order to capture an image of the person's intimate parts or undergarments, and the circumstances are such that the person being recorded would have a reasonable expectation of privacy. This offense is punishable as a Class 1 misdemeanor or, if the victim is under the age of 18, a Class 6 felony. A third or subsequent offense under § 18.2-386.1 within 10 years (each offense having occurred on a different date and the offender having been at liberty in between each conviction) is also a Class 6 felony.

Subsection (ii) of § 18.2-386.1(A), capturing an image from beneath or between a person's legs, was added to the *Code* in 2005. The Class 6 felony for a third or subsequent offense (§ 18.2-386.1(E)) was added in 2008. In 2014, the General Assembly amended § 18.2-386.1 by substituting the term "videographic or still image created by any means whatsoever" for "videotape, photograph, or film."

#### Analysis:

Available data do not contain sufficient detail to determine the number of new convictions likely to result from enactment of the proposal. However, individuals who would violate the proposed felony

provision may be sentenced similarly to those who are currently convicted of a felony under § 18.2-386.1.

According to Circuit Court Case Management System (CMS) data for fiscal year (FY) 2013 and FY2014, 14 offenders were convicted of a Class 6 felony under § 18.2-386.1 for unlawfully creating an image of a minor. No offenders were convicted during this two-year period of a Class 6 felony for a third or subsequent violation of § 18.2-386.1. In 12 of the 14 cases identified, the felony violation of § 18.2-386.1 was the primary, or most serious offense. Of those 12 offenders, three (25%) were sentenced to state-responsible (prison) terms, for which the median sentence was three years. Five (42%) were given local-responsible (jail) terms, with a median sentence of two months. The remaining four offenders (33%) did not receive an active term of incarceration to serve after sentencing.

General District Court CMS data for FY2013 and FY2014 indicate that 39 offenders were convicted of a misdemeanor under § 18.2-386.1. Approximately two-thirds of these offenders (64%) were sentenced to a local-responsible (jail) sentence, with a median sentence length of one month.

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**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.** Similarly, the proposal may increase local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

**Adult community corrections programs.** Because the proposal could result in 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 programs cannot be quantified.

**Virginia's sentencing guidelines.** Convictions under § 18.2-386.1 are not covered by the sentencing guidelines as 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.** 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.

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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.**