# Fiscal Impact Statement for Proposed Legislation

*Virginia Criminal Sentencing Commission*

## Senate Bill No. 86
***(Patron – Garrett)***

**LD#:** 16100523 **Date:** 12/15/2015

**Topic:** Child sexual abuse

**Fiscal Impact Summary:**

- **State Adult Correctional Facilities:** At least $920,316 (29 beds)
- **Local Adult Correctional Facilities:** At least -$9,705 (-1 bed)
- **Adult Community Corrections Programs:** Cannot be determined

- **Juvenile Correctional Centers:** None ($0)*
- **Juvenile Detention Facilities:** None ($0)*

* Provided by the Department of Juvenile Justice

**Summary of Proposed Legislation:**

The proposal modifies § 18.2-67.4:2, relating to the sexual abuse of a 13 or 14 year old child. Currently, an adult who, with lascivious intent, commits an act of sexual abuse with any 13 or 14 year old child is guilty of a Class 1 misdemeanor, which is punishable by up to 12 months in jail. The proposal increases the penalty for this offense from a Class 1 misdemeanor to a Class 6 felony, which is punishable by one to five years imprisonment in a state correctional facility.

**Analysis:**

During fiscal year (FY) 2014 and FY2015, a total of 44 offenders were convicted of a misdemeanor for sexually abusing a 13 or 14 year old child (as the primary, or most serious, offense) in general district court, juvenile and domestic relations court, or circuit court (see table below).

**Offenders Convicted of Misdemeanor Sexual Abuse/Battery of a 13 or 14 Year Old**

| Data Source | Statute of Primary Offense | Total Number of Offenders | Percent Sentenced to Probation | Percent Sentenced to Jail | Median Jail Sentence |
|---|---|---|---|---|---|
| General District Court Case Management System, FY2014-FY2015 | §18.2-67.4:2 or §18.2-67.4(A,i) victim identified as 13 or 14 year old | 0 | N/A | N/A | N/A |
| Juvenile and Domestic Relations Court Case Management System, FY2014-FY2015 | §18.2-67.4:2 | 22 adults | 27.3% | 72.7% | 6 months |
| | §18.2-67.4(A,i) victim identified as 13 or 14 year old | 5 adults | 20.0% | 80.0% | 9 months |
| Circuit Court Case Management System, FY2014-FY2015** | §18.2-67.4:2 | 4 offenders | 25.0% | 75.0% | 6 months |
| | §18.2-67.4(A,i) victim identified as 13 or 14 year old | 13 offenders | 30.8% | 69.2% | 8 months |

Total: 44 Offenders

** The 17 offenders convicted in circuit court were initially charged with a felony, but were ultimately convicted of only misdemeanors. Offenders whose charges were brought to circuit court as the result of an appeal from juvenile and domestic relations court were excluded.

**Impact of Proposed Legislation:**

**State adult correctional facilities.** By increasing the penalty for sexual abuse of a 13 or 14 year-old child from a Class 1 misdemeanor to a Class 6 felony, the proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. The impact is estimated to be at least 29 beds statewide by FY2022. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least $920,316. Data are insufficient to identify all misdemeanor sexual battery cases that involved a 13 or 14 year old victim. This estimate does not include instances of misdemeanor sexual battery committed against a 13 or 14 year old victim where the age of the victim could not be determined.

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

| FY17 | FY18 | FY19 | FY20 | FY21 | FY22 |
|---|---|---|---|---|---|
| 8 | 17 | 22 | 26 | 28 | 29 |

**Local adult correctional facilities.** The proposal is expected to decrease the future need for local-responsible (jail) beds, since offenders who received a jail term in the past may receive a prison sentence under the proposal. The impact on local-responsible (jail) beds is estimated to be a decrease of at least one bed by FY2022 (state savings: at least $9,705; local savings: at least $14,264).

**Estimated Six-Year Impact in Local-Responsible (Jail) Beds**

| FY17 | FY18 | FY19 | FY20 | FY21 | FY22 |
|---|---|---|---|---|---|
| 0 | -1 | -1 | -1 | -1 | -1 |

**Adult community corrections programs.** Because the proposal could result in additional felony convictions and subsequent supervision requirements for some offenders, the proposal may increase the need for state community corrections resources. The precise impact on community corrections resources, however, cannot be determined.

**Virginia's sentencing guidelines.** As a new felony in the *Code of Virginia*, the sentencing guidelines would not cover violations of § 18.2-67.4:2. However, convictions for this crime 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 (DJJ), 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 is at least $920,316 for periods of imprisonment in state adult correctional facilities and is $0 for periods of commitment to the custody of the Department of Juvenile Justice.**

**Assumptions underlying the analysis 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 2015.
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 2015.
3. Cost per prison bed was assumed to be $31,406 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 FY2014 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was $30.57 per day or $11,166 per year. The local cost was calculated by using the daily expenditure cost of $78.53 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 $44.93 per day or $16,411 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 offenders**

1. Eligible offenders were identified as those whose primary offense was a conviction under § 18.2-67.4:2 in juvenile and domestic relations court (JDR) or circuit court (there were no convictions under this statute in general district court). Offenders whose primary offense in JDR or circuit court was a Class 1 misdemeanor under § 18.2-67.4(A,i) were also included if the offense description indicated the victim was 13 or 14 years old.

**Assumptions relating to sentencing**

1. The impact of the proposed legislation, which would be effective on July 1, 2016, is phased in to account for case processing time.
2. 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, 2014. For sexual assault offenses, this rate was 9.2%.
3. It was assumed that prosecutors would charge all eligible offenders under the proposed felony provision.
4. 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 taking indecent liberties with a minor by a custodian under § 18.2-370.1(A).

**Limitations**

1. The Circuit Court Case Management System does not include cases from Fairfax or Alexandria. Although Virginia Beach left the system in FY2009, it rejoined the system in October 2014.
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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