



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 290

(Patron – Collins)

LD #: 18102929

Date: 12/22/2017

Topic: Obscene sexual display; third misdemeanor sex offense

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$253,880 (8 beds)
- **Local Adult Correctional Facilities:**
- \$4,270 (less than 1 bed)
- **Adult Community Corrections Programs:**
Cannot be determined

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

*Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposal amends § 18.2-67.5:1 relating to a third or subsequent conviction for a misdemeanor sex offense. Currently, § 18.2-67.5:1 increases the penalty for misdemeanor sexual battery (§ 18.2-67.4), attempted sexual battery (§ 18.2-67.5(C)), enumerated acts with a child (§ 18.2-371), indecent exposure (§ 18.2-387), and peeping (§ 18.2-130) from a Class 1 misdemeanor to a Class 6 felony if it is alleged in the indictment, warrant, or information that the offender has previously been convicted of two or more of the listed offenses within ten years of the current offense (with each offense occurring on a different date). The proposal adds § 18.2-387.1 (obscene sexual display/actual or simulated masturbation in public) 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) 2016 and FY2017, 10 offenders were convicted in General District Court, Juvenile and Domestic Relations Court, or Circuit Court of a misdemeanor offense for which the proposed revision of § 18.2-67.5:1 would apply (in these cases, the misdemeanor was the primary, or most serious, offense at sentencing). These 10 offenders did not already qualify for felony prosecution under § 18.2-67.5:1 and each had a current or prior offense under § 18.2-387.1 that, under the proposal, would trigger the Class 6 felony defined in § 18.2-67.5:1. Eight of these offenders received a local-responsible (jail) term with a median sentence of 5.5 months. The remaining two offenders did not receive an active term of incarceration to serve after sentencing.

According to FY2016 and FY2017 data from the Circuit Court Case Management System (CMS), a felony violation of § 18.2-67.5:1 was the primary, or most serious, offense in 19 sentencing events. More than half (52.6%) of these offenders received a state-responsible (prison) term for which the median sentence was 2.3

years. Another 42.1% of the offenders received a local-responsible (jail) term with a median sentence of six months. The remaining 5.3% did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. Because it expands the applicability of an existing Class 6, the proposal is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. The impact is estimated to be eight beds statewide by FY2024. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$253,880.

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

FY19	FY20	FY21	FY22	FY23	FY24
2	5	6	7	7	8

Local adult correctional facilities. The proposal is expected to decrease the future need for local-responsible (jail) beds, as some offenders who currently receive a jail sentence would receive a prison sentence under the proposal. The impact on local-responsible (jail) beds is estimated to be a reduction of less than one bed by FY2024 (state savings: \$4,270; local savings: \$6,118).

Adult community corrections programs. Because the proposal could result in additional felony convictions and subsequent supervision requirements, the proposal may affect adult community corrections resources. However, the potential impact on community corrections cannot be quantified.

Virginia’s sentencing guidelines. Felony convictions under § 18.2-67.5:1 are not covered by the sentencing guidelines when these offenses are the primary, or most serious, offense in a case. However, convictions under this statute 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 direct care. The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to have an impact on direct care (juvenile correctional center or alternative commitment placement) bed space needs.

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

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$253,880 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 2017.
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 2017.

3. Cost per prison bed was assumed to be \$33,707 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 FY2016 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$34.58 per day or \$12,630 per year. The local cost was calculated by using the daily expenditure cost of \$86.79 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 \$49.54 per day or \$18,094 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. It was assumed that prosecutors would charge all eligible offenders with the Class 6 felony defined in § 18.2-67.5:1.

Assumptions relating to sentencing and time served

1. The impact of the proposed legislation, which would be effective on July 1, 2018, 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, 2016. For sexual assault, this rate was 8.8%.
3. Offenders affected by the proposal were assumed to receive sentences similar to offenders currently convicted of a felony under § 18.2-67.5:1.

Limitations

1. The Circuit Court Case Management System does not include cases from Fairfax or Alexandria.

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