



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 342

(Patron – Herring)

LD#: 18103679

Date: 12/18/2017

Topic: Peeping or spying into dwelling

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 836 of the 2017 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

Currently, under § 18.2-130(A), it is a Class 1 misdemeanor for any person to 1) enter on the property of another and peep or spy into a window or opening, or 2) peep or spy on property the individual owns but leases to another under circumstances that violate the occupant's reasonable expectation of privacy. Under § 18.2-130.1, it is a Class 1 misdemeanor to peep or spy by causing an electronic device to enter the property of another or property owned but leased to another under circumstances that violate the occupant's reasonable expectation of privacy.

The proposal would expand both § 18.2-130 and § 18.2-130.1 to prohibit peeping or spying on property an individual owns but leases to another such that it violates the reasonable expectation of privacy of any person who is lawfully present in the building or on the property. The proposal explicitly includes guests and others lawfully present, not just the occupant/lessee.

Section 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).

Analysis:

By expanding the definition of peeping in § 18.2-130, the proposal may increase the number of offenders convicted of a felony for a third or subsequent misdemeanor offense under § 18.2-67.5:1. Existing data do

not contain sufficient detail to determine the number of offenders who would be affected by the proposed expansion. However, affected offenders may be sentenced similarly to those currently convicted under § 18.2-67.5:1.

According to fiscal year (FY) 2016 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. By expanding the definition of peeping under § 18.2-130, the proposal may increase the number of offenders convicted of a felony for a third or subsequent misdemeanor offense under § 18.2-67.5:1. As a result, the proposal could increase the future state-responsible (prison) bed space needs of the Commonwealth. However, data do not contain sufficient detail to estimate the number of additional felony convictions that may result if the proposal is enacted. As a result, the magnitude of the impact on prison bed space needs cannot be quantified.

Local adult correctional facilities. Similarly, the proposal may increase the 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 additional offenders, the proposal may increase the need for adult community corrections resources. However, the potential impact on state and local community corrections programs cannot be determined.

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 direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

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 836 of the 2017 Acts of Assembly 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.