



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 412 (Patron – Simon)

LD#: 18101295

Date: 12/18/2017

Topic: Marriage related crimes and the repeal of adultery

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$50,000 \*
- **Local Adult Correctional Facilities:**  
Cannot be determined
- **Adult Community Corrections Programs:**  
Cannot be determined

- **Juvenile Direct Care:**  
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:

The proposal amends §§ 18.2-19, 18.2-362, 18.2-363, 18.2-364, 18.2-366, 19.2-69, 19.2-271.1, 19.2-971.2, 20-38.1, 20-40 20-43 and 20-82 of the *Code of Virginia*, by identifying husband and wife, brother and sister, and other relationships by marriage or blood, with more inclusive, gender neutral terms. Additionally, the proposal repeals the adultery statute, § 18.2-365, and as a result amends §§ 18.2-67.5:2, 18.2-346, 18.2-366 to replace references to adultery with the phrase sexual intercourse. This proposal expands the provisions of existing laws to include same sex marriages and relationships.

#### Analysis:

According to the Sentencing Guidelines database for fiscal year (FY) 2016 and FY2017, three offenders were convicted of a felony under § 18.2-362 for marrying when the spouse was still alive (bigamy). One of these offenders received a state-responsible (prison) term of 1.5 years. The remaining two offenders received no active time to serve.

During this time, there were four offenders convicted of the Class 5 felony for adultery or fornication with “his daughter or granddaughter, or with her son or grandson or her father or his mother,” a violation of § 18.2-366. It was the primary, or most serious offense in only one case. In this case, the offender received a state-responsible (prison) term of 11 years.

According to the General District Court and the Juvenile & Domestic Relations Court Case Management Systems (CMS) for FY2016 through FY2017, three offenders were convicted of an unclassified misdemeanor with a six-month maximum sentence under § 20-40. The offense resulted from leaving the Commonwealth to avoid conviction for a prohibited marriage under § 20-38. None of these individuals received an active period of incarceration to serve after sentencing.

In the Juvenile & Domestic Relations Court or General District court over the past decade (FY2008 – FY2017), there were 11 offenders convicted of adultery under § 18.2-365. Adultery, a Class 4 misdemeanor, is punishable by a fine of not more than \$250.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Changes in the definition of marriage will expand the application of existing marriage laws to a new population. Because it expands the applicability of existing felonies under §§ 18.2-362 and 18.2-366, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Existing databases do not provide sufficient detail to estimate the number of new felony convictions that may result from enactment of the proposal. Criminal behavior defined by § 18.2-366 may currently be addressed by other statutes within the *Code of Virginia* and the net effect of changes to this statute on felony convictions cannot be determined. 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 an additional number of offenders, the proposal may increase the need for state community corrections resources. Since the number of cases that may be affected by the proposal cannot be determined, the potential impact on community corrections cannot be quantified.

**Virginia's sentencing guidelines.** Felony convictions under §§ 18.2-362 and 18.2-366 are covered by the sentencing 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.

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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 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.**