



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1716

(Patron – Gooditis)

LD#: 19100837

Date: 11/13/2018

Topic: Definition of sexual abuse

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

** 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 2 of the Acts of Assembly of 2018, 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 the definition of sexual abuse in § 18.2-67.10. Currently, sexual abuse is defined as an act committed with the intent to sexually molest, arouse, or gratify any person, where 1) the accused intentionally touches the complaining witness's intimate parts or material directly covering such intimate parts; 2) the accused forces the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts; 3) the accused causes or assists a complaining witness under the age of 13 to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts; or 4) the accused forces another person to touch the complaining witness's intimate parts or material directly covering such intimate parts. The proposal would expand this definition to include intentional acts committed against a child under the age of 13 in which the accused, with intent to sexually molest, arouse, or gratify any person, touches any part of the child's body, either on the skin or the material covering the child's body.

By expanding the definition of sexual abuse in § 18.2-67.10, the proposal potentially expands the applicability of other provisions of the *Code* that directly or indirectly reference the definition of sexual abuse. These include:

- Aggravated sexual battery (§ 18.2-67.3; a felony punishable by 1-20 years)
- Sexual battery (§ 18.2-67.4; a misdemeanor punishable by up to 12 months)
- Sexual battery or attempted sexual battery, 3rd or subsequent offense (§ 18.2-67.5:1; a Class 6 felony)
- Indecent liberties committed by a parent, step-parent, grandparent or step-grandparent (§ 18.2-370(D); a Class 5 felony or, if the child is under the age of 15, a Class 4 felony)
- Indecent liberties by a custodian (§ 18.2-370.1; a Class 6 felony for the first offense and a Class 5 felony for any subsequent offense)).

By expanding the applicability of the above offenses, the proposal also potentially expands the number of offenders who would be required to register with the Sex Offender and Crimes Against Minors Registry (§ 9.1-902). Under § 18.2-472.1, the first Sex Offender Registry violation committed by an offender who is not defined as sexually violent is punishable as a Class 1 misdemeanor; a second or subsequent Registry violation is a Class 6 felony. For an offender defined as sexually violent, the first Registry violation is a Class 6 felony, while a subsequent violation is a Class 5 felony.

Finally, the proposal repeals § 18.2-370.6, which prohibits a person 18 years of age or older from kissing a child under the age of 13 on the mouth with lascivious intent while knowingly and intentionally penetrating the child's mouth, a Class 1 misdemeanor. While § 18.2-370.6 is repealed in the proposal, the behavior would likely be covered by the proposed expansion of the definition of sexual abuse. The proposal amends several statutes to remove references to § 18.2-370.6.

Analysis:

Existing data do not contain sufficient detail to determine the number of cases that would be affected by the proposal. However, affected offenders may be sentenced similarly to those who are currently convicted of the specific offenses listed above (see table).

Offenders Convicted of Affected Felony Offenses

Primary Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
Aggravated sexual battery (§ 18.2-67.3)	311	6.4%	9.3%	6 mos.	84.2%	5 yrs.
Sexual battery (§ 18.2-67.4)	158	34.2%	65.8%	4 mos.	na	na
Sexual battery or att. sexual battery, 3 rd or subsequent offense (§ 18.2-67.5:1)	1	0.0%	0.0%	na	100.0%	6 yrs.
Indecent liberties committed by a parent, etc. - child 15-17 years of age (§ 18.2-370(D))	2	0.0%	50.0%	2.0 mos.	50.0%	2.5 yrs.
Indecent liberties committed by a parent, etc. - child under 15 years of age (§ 18.2-370(D))	12	16.7%	16.7%	7.0 mos.	66.7%	1.8 yrs.
Indecent liberties by a custodian, 1 st offense (§ 18.2-370.1)	84	11.9%	31.0%	6 mos.	57.1%	1.5 yrs.
Indecent liberties by a custodian, 2 nd or sub. offense (§ 18.2-370.1)	2	0.0%	0.0%	na	100.0%	3.5 yrs.
Sex Offender Registry violation: Not violent category, 1 st offense	301	45.5%	54.5%	2.0 mos.	na	na
Sex Offender Registry violation: Not violent category, 2 nd or subsequent offense	57	29.8%	59.6%	4 mos.	10.5%	1.7 yrs.
Sex Offender Registry violation: Violent category, 1 st offense	255	23.1%	63.5%	6 mos.	13.3%	1.1 yrs.
Sex Offender Registry violation: Violent category, 2 nd or subsequent offense	197	11.7%	56.9%	6 mos.	31.5%	1.3 yrs.

Note: Analysis is based on sentencing events in which the specified offense was the primary, or most serious, offense.

Sources: Supreme Court of Virginia - General District Court Case Management System (CMS), FY2017-FY2018;

Supreme Court of Virginia - Circuit Court Case Management System (CMS), FY2017-FY2018; and

Virginia Criminal Sentencing Commission - Sentencing Guidelines Database, FY2017-FY2018

Impact of Proposed Legislation:

State adult correctional facilities. Because it expands the applicability of several existing felonies, the proposed legislation may increase the future 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. Thus, the magnitude of the impact on prison beds cannot be quantified.

Local adult correctional facilities. Similarly, the proposal may also increase the local-responsible (jail) bed space needs of the Commonwealth. However, 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 resources cannot be quantified.

Virginia's sentencing guidelines. Felony convictions under § 18.2-67.3, § 18.2-370.1 (first offense), and § 18.2-472.1 are covered by the sentencing guidelines as the primary, or most serious, offense. Convictions under other affected statutes are not covered by the sentencing guidelines as the most serious offense. Such convictions, however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines is necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice, the proposal is not expected to impact 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 cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2018, 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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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