



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1845 (Patron – Brewer)

LD#: 19102859

Date: 12/28/2018

Topic: Carnal knowledge of an arrestee

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 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 amends § 18.2-64.2 to provide that an accused is guilty of carnal knowledge of a pretrial or posttrial offender, punishable as a Class 6 felony, if 1) he is an employee or volunteer providing services at a residential substance abuse program licensed by the Department of Behavioral Health and Development Services; 2) the offender is participating in such residential substance abuse program as a condition of bail or posttrial supervision; and 3) the accused carnally knows, without use of force, threat, or intimidation, the pretrial defendant or posttrial offender. In addition, the proposal would increase the penalty for carnal knowledge of a defendant on bond by an owner or employee of a bail bond company from a Class 1 misdemeanor to a Class 6 felony. This misdemeanor offense was established by the 2013 General Assembly with an effective date of July 1, 2013.

Currently, the Class 6 felony defined in § 18.2-64.2 only includes the carnal knowledge of an inmate, parolee, probationer, detainee, pretrial defendant or posttrial offender by certain corrections or probation officials.

Analysis:

According to Circuit Court Case Management System (CMS) data for fiscal year (FY) 2014 through FY2018, a misdemeanor violation of § 18.2-64.2 was the primary (most serious) offense at sentencing in two cases. Both offenders were sentenced to local-responsible (jail) terms. One offender (convicted of two counts of this offense) was sentenced to serve a total of 18 months in jail. The second offender, convicted of one count of this offense and two counts of solicitation of prostitution (also a Class 1 misdemeanor), was sentenced to serve a total of 30 months in jail; in this case, however, the solicitation convictions accounted for the majority of the offender's effective time.

If the proposal is enacted, offenders now convicted of a misdemeanor under § 18.2-64.2 and those convicted of the newly-defined Class 6 felony, in the future, may be sentenced similarly to those currently convicted of a felony under this provision. According to Circuit Court Case Management System (CMS) data for fiscal year (FY) 2017 and FY2018, 12 offenders were convicted of felony carnal knowledge of an inmate, etc., under § 18.2-64.2 as the primary (or most serious) offense. Eight of these offenders did not receive an active term of incarceration to serve after sentencing. Three offenders received local-responsible (jail) terms of one day, three months and 12 months, respectively. The remaining one offender received a state-responsible (prison) term of 1.3 years.

Impact of Proposed Legislation:

State adult correctional facilities. Because it establishes a new Class 6 felony and increases the penalty for an existing offense from a Class 1 misdemeanor to a Class 6 felony, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Existing data do not provide sufficient detail to estimate the number of new felony convictions that would result from enactment of the proposal. Therefore, the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal may increase the local-responsible (jail) bed space needs. Since the number of new convictions that may result from enactment of the proposal cannot be determined, the magnitude of the impact on jail bed space needs cannot be estimated.

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 state community corrections resources. Since the number of cases that may be affected cannot be determined, the net impact on community corrections cannot be quantified.

Virginia’s sentencing guidelines. Convictions under § 18.2-64.2 are not covered by the sentencing guidelines as the primary (most serious) offense. 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. 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 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.