



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2470

(Patron – Gilbert)

LD#: 19102660

Date: 12/17/2018

Topic: Prostitution and human trafficking

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$207,235 (6 beds)
- **Local Adult Correctional Facilities:**
-\$4,329 (less than 1 bed)
- **Adult Community Corrections Programs:**
None (\$0)

- **Juvenile Direct Care:**
Cannot be determined *
- **Juvenile Detention Facilities:**
Cannot be determined *

* Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposal modifies §§ 18.2-355, 18.2-356, 18.2-357 and 18.2-357.1 of the *Code of Virginia* to raise existing felony penalties and establish mandatory minimum terms for certain offenses related to prostitution and human trafficking involving minors. These offenses are currently Class 3 felonies, with a statutory penalty range from 5 to 20 years imprisonment. The proposal increases the penalty to a Class 2 felony (statutory penalty range of 20 years to life imprisonment) and imposes a mandatory minimum term of imprisonment of 25 years for the following crimes if minors are involved: (i) pandering; (ii) receiving money for procuring a person for the purpose of prostitution, forced labor, or child pornography; (iii) receiving money from the earnings of a person engaged in prostitution; and (iv) commercial sex trafficking.

Analysis:

According to the Circuit Court Case Management System (CMS) for fiscal years 2017 and 2018, there were six offenders convicted under §§ 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1 for prostitution and human trafficking crimes involving minors during the two-year period. For five offenders, the felony prostitution or human trafficking offense was the primary (most serious) offense at sentencing. One of these offenders (20%) received a 10-month local-responsible (jail) sentence, while the other four offenders (80%) received state-responsible (prison) sentences with a median sentence of approximately 4.3 years. Another offender, convicted of two counts of aggravated sexual battery (the primary offense) and two counts of sex trafficking of a minor (as an additional offense) was sentenced to serve fourteen years in prison.

Impact of Proposed Legislation:

State adult correctional facilities. By increasing existing felony penalties and establishing mandatory minimum terms for the commission of certain human trafficking and prostitution-related felonies, the

proposal is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. Enhancing penalties for the felony convictions as proposed is expected to increase bed space needs by six beds by FY2025. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$207,235.

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

FY20	FY21	FY22	FY23	FY24	FY25
0	1	1	2	4	6

Local adult correctional facilities. The proposal is expected to decrease the future need for local-responsible (jail) beds. The impact on local-responsible (jail) beds is estimated to be one partial bed by FY2025 (state savings: \$4,329; local savings: \$6,339).

Adult community corrections programs. The proposal is not expected to increase the need for community corrections resources and will delay the need for services for some offenders affected by the proposal, as they will serve in prison longer prior to being released to the community.

Virginia's sentencing guidelines. Felony convictions under the above sections involving minors are not covered by the sentencing guidelines when the crime is the primary (most serious) offense in a case. A conviction for such an offense could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. Whenever a mandatory minimum term applies, guidelines preparers are instructed to replace any part of the guidelines range that falls below the mandatory minimum with the mandatory minimum term that is required by law. 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 quantified; however, any impact is likely to be small.

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 is \$207,235 for periods of imprisonment in state adult correctional facilities and cannot be determined 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 2018.
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 2018.
3. Cost per prison bed was assumed to be \$35,053 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 FY2017 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$33.83 per day or \$12,356 per year. The local cost was calculated by using the daily expenditure cost of \$85.98 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 \$49.53 per day or \$18,091 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. Analysis is based on the number of offenders convicted of certain offenses under existing *Code*. Fiscal year (FY) 2017 and FY2018 Circuit Court Case Management System (CMS) data shows that six offenders would be eligible for the enhanced penalties including the proposed mandatory minimum sentence.

Assumptions relating to sentencing and time served

1. The impact of the proposed legislation, which would be effective on July 1, 2019, 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, 2017. For sex offenses, this rate was 9.0%.
3. If an offender was convicted of multiple counts, the mandatory minimum terms were assumed to run consecutively.¹
4. Identified offenders meeting the assumptions for the proposed mandatory minimums who received sentences less than the proposed mandatory minimums were assumed to serve the mandatory minimum term specified in the proposal. Offenders currently receiving sentences exceeding the proposed mandatory minimum were assumed to be unaffected by the proposed legislation.

Limitations

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

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¹ Analysis revealed that, in 96.9% of cases, judges set multiple mandatory minimum sentences to run consecutively (2010 *Annual Report* of the Virginia Criminal Sentencing Commission).