



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 5045 **Amendment in the Nature of a Substitute** ***(Patron Prior to Substitute –Delaney)***

LD#: 20201022

Date: 8/27/2020

Topic: Carnal knowledge of a person in law enforcement custody

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 1289 of the Acts of Assembly of 2020 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 add law-enforcement officers to the list of persons who are subject to a Class 6 felony if they are in a position of authority over and carnally know without force, threat, or intimidation any inmate, parolee, probationer, detainee, pretrial defendant or posttrial offender. In addition, the proposal adds individuals in the custody of law enforcement to the list of persons against whom carnal knowledge would be unlawful.

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 FY 2019, 23 offenders were convicted of felony carnal knowledge of an inmate, etc., under § 18.2-64.2 as the primary (or most serious) offense. While 56.5% of these offenders did not receive an active term of incarceration to serve after sentencing, 34.8% of the offenders were sentenced to local-responsible (jail) terms with a median sentence of 4.5 months. The remaining two offenders (8.7%) were sentenced to state-responsible (prison) terms of 1.3 years and 1.5 years, respectively.

Impact of Proposed Legislation:

State adult correctional facilities. Because it expands the applicability of an existing felony offense, 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 adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential 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 1289 of the Acts of Assembly of 2020 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.

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