



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1240

(Patron – Stuart)

LD #: 21101085

Date: 12/09/2020

Topic: Sexual assault committed by parents, stepparents, etc.

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000*
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
None (\$0)

- **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 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, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

Summary of Proposed Legislation:

The proposed legislation amends § 18.2-67.1 (forcible sodomy) and § 18.2-67.2 (object sexual penetration) to expand the applicability of these provisions. Currently, an individual can be charged under one of these provisions if the offense was committed 1) by force, threat or intimidation, 2) through the victim's mental incapacity or physical helplessness, or 3) against a child under the age of 13. These offenses are generally punishable by a term of imprisonment from five years to life.

Under the proposal, forcible sodomy and object sexual penetration would be expanded to explicitly include any act committed by a parent, stepparent, grandparent or step-grandparent against a child, stepchild, grandchild, or step-grandchild 13 to 17 years of age. The expansion would apply whether or not the act involved force, threat, intimidation, incapacity, or helplessness (as required under current law). Many of these offenses could be prosecuted currently as aggravated sexual battery (§ 18.2-67.3(A,3)) or sodomy (§ 18.2-361(B)), which include provisions specifically relating to acts committed by a parent, stepparent, grandparent, or step-grandparent against a child 13 to 17 years of age; under § 18.2-67.3(A,3) and § 18.2-361(B), these acts are punishable as felonies with a maximum penalty of 20 years.

The proposal also modifies § 18.2-366 to increase the penalty for incest from a Class 3 felony (maximum of 20 years) to a Class 2 felony (maximum of life) when committed by a parent or grandparent with a child/grandchild 13 to 17 years of age.

Analysis:

According to FY2019 and FY2020 Sentencing Guidelines (SG) and Circuit Court Case Management System (CMS) data, a felony conviction for rape, forcible sodomy, or object sexual penetration was the primary (or most serious) offense in 324 sentencing events. Nearly all of the offenders (97.3%) were sentenced to a state-responsible (prison) term. Of the offenders receiving a prison term, approximately 10.5% received a life sentence to serve, while the remaining offenders were given sentences with a median of 13 years to serve in prison. Another 1.5% of the offenders received a local-responsible (jail) term with a median sentence length of seven months. The remaining 1.2% of offenders did not receive an active term of incarceration to serve after sentencing.

During FY2019-FY2020, 12 offenders were convicted of a Class 3 felony under § 18.2-366 for incest involving a parent/grandparent and a 13 to 17-year-old child/grandchild. This was the most serious offense in eight cases. Six of the eight offenders received a state-responsible (prison) term with a median sentence of eight years. The remaining two offenders were sentenced to serve 12 months in jail.

Lastly, during the same time period, 29 offenders were convicted of aggravated sexual battery (§ 18.2-67.3(A,3)) or sodomy (§ 18.2-361(B)) involving a parent, stepparent, etc., and a child, stepchild, etc., age 13 to 17 (as the most serious offense). Of these, 93.1% received a state-responsible (prison) term with a median sentence of seven years. One offender was sentenced to serve six months in jail and one offender did not receive an active term of incarceration to serve after sentencing.

Data are insufficient to identify the total number of incidents involving a parent, stepparent, etc., that might be covered under the proposed expansion of §§ 18.2-67.1 and 18.2-67.2. Moreover, the data are insufficient to estimate how sentencing patterns may change for defendants affected by the proposal.

Impact of Proposed Legislation:

State adult correctional facilities. In essence, the proposal increases the statutory maximum penalty for certain sexual offenses from 20 years to life. In this way, the proposal could increase the state-responsible (prison) bed space needs of the Commonwealth. The total number of defendants who may be affected by the proposal, and changes in judicial sentencing patterns that may result, cannot be estimated with available data; therefore, the magnitude of the impact cannot be determined.¹

Local adult correctional facilities. The proposal may also increase local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

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 stay in prison longer prior to being released to the community.

Virginia's sentencing guidelines. Felony convictions of § 18.2-366(B) are currently covered by the sentencing guidelines. The Commission will monitor sentencing patterns after enactment to determine if the guidelines for this offense should be adjusted to provide a more accurate of the typical, or average,

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case outcome. While the sentencing guidelines cover most acts of forcible sodomy and object sexual penetration, the guidelines would not apply to acts added by the proposal (when the act is the primary, or most serious, offense at sentencing); however, such a conviction may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. The Commission will monitor sentencing patterns after enactment to determine if it is feasible to add the new elements to the guidelines.

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 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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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