



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2263

(Patron – Wilt)

LD#: 23100746

Date: 12/06/2022

Topic: Sex offenses prohibiting proximity to children, etc.

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 2022, Special Session I, 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 proposal amends §§ 18.2-370.2, 18.2-370.4, and 18.2-370.5, relating to offenders who have been convicted of certain crimes that prohibit them from being within a certain proximity to children, working on school property, or entering onto school or other school-related properties.

Currently, under § 18.2-370.2, qualifying offenders are prohibited from going within 100 feet of any premises defined as a school (primary, secondary, or high school), child day program, or public playground, athletic field or facility, or gymnasium. Under § 18.2-370.4, qualifying offenders are prohibited from working or engaging in any volunteer activity on the property of a school or child day center. Under § 18.2-370.5, Tier III (sexually violent) offenders, as defined in § 9.1-902, are prohibited from entering or being present in a school, child day center, school bus, or any other properties that are solely being used for school-related or school sponsored activities. All of the aforementioned violations are Class 6 felonies punishable by one to five years imprisonment.

Under the proposal, the prohibitions regarding proximity to children (§ 18.2-370.2) would be extended to include adults convicted of certain prostitution and commercial sex crimes involving minors. Prohibitions related to working on school property (§ 18.2-370.4) would be expanded to include all of the same triggering offenses listed on § 18.2-370.2 that prohibit proximity to children. Prohibitions against entering school property (§ 18.2-370.5) would be expanded to include all Tier I and Tier II offenses (as defined in § 9.1-902 for the purposes of the Sex Offender and Crimes Against Minors Registry) where the victim is a minor.

Analysis:

Existing data sources do not contain sufficient detail to identify the number of individuals who would be affected by the proposal. First, it is unclear how many of the offenders affected by this proposal committed certain offenses against minors. Second, it is difficult to estimate how many of these offenders will violate the proposed provisions. However, affected offenders may be sentenced similarly to those currently convicted of a Class 6 felony under §§ 18.2-370.2, 18.2-370.4, and 18.2-370.5.

According to the Circuit Court Case Management System (CMS) for fiscal years 2017 through 2022, five offenders were convicted of felonies under § 18.2-370.2 (prohibiting proximity to children) during the six-year period. It was the primary, or most serious, offense in all the cases. All five offenders were given local-responsible (jail) sentences with a median sentence of two months. According to the same data, 63 offenders were convicted of felonies under § 18.2-370.5 (prohibiting entry onto school property). Violation of §18.2-370.5 was the primary, or most serious, offense in 57 of the cases. Approximately half (49.1%) of these offenders did not receive an active term of incarceration to serve after sentencing. Another 36.8% were given a local-responsible (jail) term and 14.1% received a state-responsible (prison) term. For the offenders committed to prison, the median sentence was 2.1 years. No felony convictions under § 18.2-370.4 were observed during this six-year period.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of existing felonies, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The number of additional felony convictions that may result from the proposal cannot be estimated; therefore, the magnitude of the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal may increase local-responsible (jail) bed space needs; 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 additional offenders, the proposal may increase the need for adult community corrections resources. The potential impact on community corrections programs cannot be determined.

Virginia's Sentencing Guidelines. Convictions under the existing §§ 18.2-370.2, 18.2-370.4 and 18.2-370.5 are not covered by the Sentencing Guidelines as the primary (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 would be necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase 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 increase 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 2022, 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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