



## Fiscal Impact Statement for Proposed Legislation

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### Virginia Criminal Sentencing Commission

#### House Bill No. 2398 Amendment in the Nature of a Substitute (Patron Prior to Substitute – Bell)

**LD#:** 23106773

**Date:** 02/16/2023

**Topic:** Sexual extortion

#### 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 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.

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#### Summary of Proposed Legislation:

The proposal adds § 18.2-59.1 to the *Code of Virginia* to create the crime of sexual extortion. Under the proposed § 18.2-59.1, it would be a Class 5 felony for any person to maliciously disseminate or sell, or maliciously threaten to disseminate or sell, a videographic or still image that depicts the complaining witness, or a member of his or her family or household, in the nude or in a state of undress with the intent to cause the complaining witness to engage in sexual intercourse, etc., who thereby engages in sexual intercourse, etc., with the complaining witness. Any adult who violates the proposed section with a person under the age of 18 would be guilty of a felony punishable by imprisonment of 1 to 20 years.

The proposal also adds the proposed § 18.2-59.1 to the list of Tier I offenses, for which offenders are required under § 9.1-902 to register with the Sex Offender and Crimes Against Minors Registry. Under § 18.2-472.1, for an offender previously convicted of a Tier I offense, the first Registry violation is a Class 1 misdemeanor, while a subsequent Registry violation is a Class 6 felony.

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#### Analysis:

Existing data do not contain sufficient detail to determine the number of cases that would be affected by the proposal. However, affected offenders may be sentenced similarly to individuals convicted under current provisions.

The proposed offense for sexual extortion would be a Class 5 felony. During FY2021 and FY2022, Circuit Court Case Management System (CMS) data indicate that, among defendants convicted of a completed Class 5 felony sex offense as the primary (or most serious) offense, 64.2% received a state-responsible (prison) term. The median prison sentence was 3.0 years. Another 26.3% of the defendants received a local-responsible (jail) term for which the median sentence was 6.0 months. The remaining 9.5% of defendants did not receive an active term of incarceration to serve after sentencing.

The proposal also includes a felony punishable by 1 to 20 years for sexual extortion of a minor. Sentencing Guidelines data for FY2021 and FY2022 reveal that defendants convicted of aggravated sexual battery under §§ 18.2-67.3(A,1) or § 18.2-67.3(A,4,a), also punishable by 1 to 20 years, received a state prison term in the majority (84.5%) of cases. For those defendants given a prison term, the median sentence was 5.0 years.

Under the proposal, the new felonies would be added to the list of Tier I offenses requiring registration with the Sex Offender and Crimes Against Minors Registry. Sentencing outcomes for violations of Registry requirements applicable to Tier I offenses are shown in the table below.

**Offenders Convicted of Select Sex Offender and Crimes Against Minors Registry Offenses, FY2021-FY2022**

Primary Offense	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
Sex Offender Registry violation: Not Tier III/murder, 1 <sup>st</sup> offense (§ 18.2-472.1) <sup>1</sup>	54.4%	45.6%	2 mos.	NA	NA
Sex Offender Registry violation: Not Tier III/murder, 2 <sup>nd</sup> or subsequent offense (§ 18.2-472.1) <sup>2</sup>	25.9%	69%	4.8 mos.	5.1%	1.3 yrs.

Note: Analysis is based on sentencing events in which the specified offense was the primary, or most serious, offense.  
Sources: <sup>1</sup> Supreme Court of Virginia - General District Court Case Management System (CMS), FY2021-FY2022; and  
<sup>2</sup> Virginia Criminal Sentencing Commission - Sentencing Guidelines Database, FY2021-FY2022

**Impact of Proposed Legislation:**

**State adult correctional facilities.** By establishing two new felony offenses and expanding the applicability of existing sex offender registry violation offenses, the proposal may result in additional felony convictions and increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal; therefore, the magnitude of the impact on prison beds cannot be quantified.

**Local adult correctional facilities.** Similarly, the proposal may also increase the local-responsible (jail) bed space needs of the Commonwealth; 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 an additional number of 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 resources cannot be quantified.

**Virginia's Sentencing Guidelines.** As new felonies, convictions under the proposed § 18.2-59.1 would not be covered by the Sentencing Guidelines. Such convictions, however, could augment the Guidelines recommendation (as additional offenses) if the most serious offense at sentencing is covered by the

Guidelines. Felony violation of Sex Offender and Crimes Against Minors Registry requirements are covered by the Guidelines. No adjustment to the Guidelines is 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 an 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.

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**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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

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