



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 2475

(Patron – Krizek)

LD #: 23104994

Date: 01/20/2023

Topic: Sexual battery

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$50,000 \*
- **Local Adult Correctional Facilities:**  
Cannot be determined, likely to be small
- **Adult Community Corrections Programs:**  
Cannot be determined, likely to be small

- **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.

#### Summary of Proposed Legislation:

The proposed legislation expands the offense of sexual battery (§ 18.2-67.4) to include sexual abuse of a complaining witness committed by a person who was, at the time of the offense, a member of the clergy or similar functionary of a religious organization in a position of trust or authority over the complaining witness. The proposal applies if the complaining witness was 18 years of age or older while under the spiritual care of the accused. Sexual battery in violation of § 18.2-67.4 is a Class 1 misdemeanor.

Currently, under § 18.2-67.5:1, when a person is convicted of misdemeanor sexual battery under § 18.2-67.4 or other specified misdemeanor sex offense and the court finds that the person has previously been convicted of two or more of such offenses during a 10-year period (each such offense occurring on a different date), the offense is punishable as a Class 6 felony.

#### Analysis:

Data are insufficient to determine the number of incidents of sexual abuse committed by a health care professional, counselor, or member of the clergy. However, the additional individuals convicted of sexual battery as a result of the proposal may be sentenced similarly to individuals sentenced under existing provisions.

According to General District Court Case Management System (CMS) data for fiscal year (FY) 2017 through FY2022, 385 defendants were convicted under § 18.2-67.4 for misdemeanor sexual battery. Nearly two-thirds (65.2%) of these defendants received a local-responsible (jail) term for which the

median sentence was 3.0 months. The remaining defendants (34.8%) did not receive an active term of incarceration to serve after sentencing.

Based on Circuit Court CMS data for the same six-year period, 69 defendants were convicted of a Class 6 felony for a third or subsequent specified misdemeanor sex offense, such as sexual battery (see § 18.2-67.5:1). This was the primary (most serious) offense for 64 of the defendants. Of these defendants, 46.9% received a state-responsible (prison) term for which the median sentence was 2.0 years. Another 45.3% received a local-responsible (jail) term with a median sentence of 6.0 months. The remaining defendants (7.8%) did not receive an active term of incarceration to serve after sentencing.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposal expands the applicability of an existing felony for which imprisonment is authorized. Thus, the proposal could increase the 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 cannot be determined.

**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.** Because the proposal could result in additional felony convictions and subsequent supervision requirements for those offenders, the proposal may affect adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections programs cannot be quantified.

**Virginia's Sentencing Guidelines.** Felony violations of § 18.2-67.5:1 are not covered by the Guidelines when the crime is the primary, or most serious, offense at sentencing. Furthermore, the Guidelines do not apply if the most serious offense at sentencing is a misdemeanor. Such convictions, however, may augment the Guidelines recommendation (as additional offenses) 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.

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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.**