



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1525 *(Patron – Freitas)*

LD#: 24102085

Date: 01/04/2024

Topic: Unauthorized creation of AI-generated image of another, 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:**
Cannot be determined**
- **Juvenile Detention Facilities:**
Cannot be determined**

** Provided by the Department of Juvenile

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, 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 expands the applicability of the existing penalties defined under §18.2-386.1 to include any person who knowingly and intentionally creates any videographic or still image using artificial intelligence of any nonconsenting person if that person is (i) totally nude, performing sexual acts, clad in undergarments, or in a state of undress so as to expose the genitals, pubic area, buttocks, or female breast and (ii) such videographic or still image appears to be or is intended to appear to be such nonconsenting person.

Currently, subsection A of § 18.2-386.1 states that it is unlawful to knowingly and intentionally create any videographic or still image of a nonconsenting person if that person is i) nude, clad in undergarments, or in a state of undress so as to expose the genitals, etc. in a restroom, dressing room, locker room, etc., or ii) the videographic or still image is created by placing the lens or image-gathering component of the recording device in a position directly beneath or between a person's legs in order to capture an image of the person's intimate parts or undergarments, and the circumstances are such that the person being recorded would have a reasonable expectation of privacy. This offense is punishable as a Class 1 misdemeanor or, if the victim is under the age of 18, a Class 6 felony. A third or

subsequent offense under § 18.2-386.1 within 10 years (each offense having occurred on a different date and the offender having been at liberty in between each conviction) is also a Class 6 felony.¹

Analysis:

Available data do not contain sufficient detail to determine the number of new convictions likely to result from enactment of the proposal. However, individuals who violate the proposed provision may be sentenced similarly to those who are currently convicted of offenses under § 18.2-386.1.

General District Court Case Management System (CMS) data for fiscal year (FY) 2022 and FY2023 indicate that 23 offenders were convicted of a misdemeanor under § 18.2-386.1. Of these, 70% of the defendants were sentenced to a local-responsible (jail) sentence with a median sentence length of 2.0 months. The remaining 30% did not receive an active term of incarceration to serve after sentencing.

According to Circuit Court CMS data for the same period, 22 defendants were convicted of a Class 6 felony under § 18.2-386.1 for unlawfully creating an image of a minor. In 13 of the 22 cases, the felony violation of § 18.2-386.1 was the primary, or most serious offense. Of those 13 defendants, two (15.4%) received state-responsible (prison) terms with sentences of five and ten years, respectively. Seven (53.8%) were given local jail terms with a median sentence of 6.0 months. The remaining four (30.8%) did not receive an active term of incarceration to serve after sentencing. In addition, one defendant was convicted during this two-year period of a Class 6 felony for a third or subsequent violation of § 18.2-386.1 as the most serious offense. This individual was sentenced to a state prison term of 1.0 year.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of existing felony offenses under § 18.2-386.1, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Existing databases do not provide sufficient detail to estimate the number of additional felony convictions likely to result from enactment of the proposal. Therefore, the impact of the proposal cannot be determined.

Local adult correctional facilities. Similarly, the proposal may 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 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 programs cannot be quantified.

Virginia's Sentencing Guidelines. Convictions under § 18.2-386.1 are not covered by the Sentencing Guidelines as the primary (most serious) offense. A conviction for such an offense, however, could augment the Guidelines recommendation (as an additional offense) if the most serious offense at sentencing is covered by the Guidelines. Felony offenses under this section are not defined as violent under § 17.1-805(C) for the purposes of the Guidelines. No adjustment to the guidelines would be necessary under the proposal.

¹ Under current law, obscenity offenses and other felonies defined in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, except for a violation of § 18.2-374.1:1 (A), are ineligible for the enhanced sentence credits specified in § 53.1-202.3; therefore, individuals convicted of any felony offenses under § 18.2-386.1 must serve a minimum of 85% of the sentence ordered by the court.

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 (DJJ) reports that this proposal's impact on detention center bed space cannot be determined.

Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, 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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