



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 926 (Patron – Shin)

LD#: 24104917

Date: 01/10/2024

Topic: Dissemination of images of another

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$1,607,459 (30 beds)*
- **Local Adult Correctional Facilities:**
At least \$45,090 (3 beds)
- **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

* 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 § 18.2-386.2 and increases the penalty for the offense of unlawful dissemination or sale of image of another from a Class 1 misdemeanor to a Class 4 felony. The proposal removes the requirement that a person must have the intent to coerce, harass, or intimidate another person to be guilty of such unlawful dissemination or sale. The proposal also expands the current categories of images that are unlawful to disseminate or sell to include any videographic or still image that depicts another person who is in a state of undress so as not to expose the genitals, pubic area, buttocks, or female breast but such videographic or still image is sexual or sensual in nature.¹

Finally, the proposal extends the statute of limitation for prosecution of violations of §§ 18.2-386.1 and 18.2-386.2 by specifying that prosecution must commence within ten years of the date the victim discovers the offense. Currently, prosecution for a violation of § 18.2-386.1 must commence within five years of the commission of the offense and prosecution for violation of § 18.2-386.2 must commence within one year of the commission of the offense.

Analysis:

According to General District Court Case Management System (CMS) data for fiscal year (FY) 2022 to FY2023, there were 51 cases in which a conviction for disseminating images of another under § 18.2-386.2 was the primary, or most serious, offense in the sentencing event. Of these events, the majority

¹ Under current law, obscenity and related offenses as a felony under 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 the proposed felony offense under § 18.2-386.2 must serve a minimum of 85% of the sentence ordered by the court.

(60.8%) received probation without an active term of incarceration, while 39.2% received a local-responsible (jail) sentence with a median sentence of two months.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of the offense defined in § 18.2-386.2 and increasing the penalty from a Class 1 misdemeanor to a Class 4 felony, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. These modifications are expected to increase bed space needs by at least 30 beds by FY2030. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$1,607,459. There may be additional offenders who would be affected by the proposed expansion of § 18.2-386.2 and/or the extension of the statute of limitation; however, additional cases could not be identified with the available data.

Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY25	FY26	FY27	FY28	FY29	FY30
9	18	22	26	29	30

Local adult correctional facilities. Similarly, the proposal may increase the local-responsible (jail) bed space needs as those who affected could serve longer periods in jail due to the proposal. The impact estimated to be at least three beds by FY2030 (state costs: \$45,090; local costs: \$70,725).

Estimated Six-Year Impact in Local-Responsible (Jail) Beds

FY25	FY26	FY27	FY28	FY29	FY30
3	3	3	3	3	3

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. Due to data limitations, the potential impact on community corrections resources cannot be quantified.

Virginia's Sentencing Guidelines. The proposed felony would not be covered by the Sentencing Guidelines as the primary (most serious) offense in a case; however, such a conviction may augment the Guidelines recommendation (as an additional offense) if a covered offense is the most serious at sentencing. No immediate adjustment to the Guidelines would be necessary under the proposal. If the proposal is enacted, the Sentencing Commission in the future could conduct detailed analyses of sentencing patterns to determine the feasibility of adding the felony to the Guidelines system. The proposed felony would not be defined as violent under § 17.1-805(C) for the purposes of the Guidelines.

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.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$1,607,459 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety's Committee on Inmate Forecasting in 2023.
2. New cases resulting in state-responsible sentences were based on forecasts approved by the Secretary of Public Safety's Committee on Inmate Forecasting in 2023.
3. Cost per prison bed was assumed to be \$52,894 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*
4. Cost per jail bed was based on The Compensation Board's FY2021 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$40.39 per day or \$14,752 per year. The local cost was calculated by using the daily expenditure cost of \$107.81 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$63.35 per day or \$23,139 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

Assumptions relating to offenders

1. The Commission identified all sentencing events during FY2022-FY2023 in which a Class 1 misdemeanor under § 18.2-386.2 was the primary, or most serious, offense. Defendants convicted of these offenses will be affected by the proposed legislation.

Assumptions relating to sentencing and time served

1. The impact of the proposed legislation, which would be effective on July 1, 2024, is phased in to account for case processing time.
2. Offenders affected by the proposal (convicted of a Class 1 misdemeanor under § 18.2-386.2 currently) were assumed to receive sentences similar to offenders convicted of the Class 6 felonies under § 18.2-386.1 (relating to unlawful creation of videographic/still image of another (3rd or subsequent) or minor).
3. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of September 30, 2023. Beginning July 1, 2022, most nonviolent felons were eligible for higher rates of earned sentence credits (up to 15 days for every 30 days served, see § 53.1-202.3). However, felons convicted of obscenity and related crimes defined under § 53.1-202.3 (A) still earn a maximum of 4.5 days for every 30 days served. For sex offenses other than rape/sexual assault, the average rate of earned sentence credits used to be 12.56% (prior to July 1, 2022).

Limitations

1. The analysis does not include cases from Alexandria as data from that jurisdiction are unavailable.

obscene05_4917