



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 251 Amendment in the Nature of a Substitute (Patron Prior to Substitute – Watts)

LD#: 20107946

Date: 02/10/2020

Topic: Prostitution-related crimes

Fiscal Impact Summary:

<ul style="list-style-type: none"> • State Adult Correctional Facilities: \$50,000* • Local Adult Correctional Facilities: Cannot be determined • Adult Community Corrections Programs: Cannot be determined 	<ul style="list-style-type: none"> • Juvenile Direct Care: Cannot be determined** • Juvenile Detention Facilities: Cannot be determined** <p>**Provided by the Department of Juvenile Justice</p>
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* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 854 of the 2019 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal increases the penalty for violations of § 18.2-347 from a Class 1 misdemeanor to a Class 6 felony for an adult who visits a bawdy place that he knows is used or will be used for lewdness, assignation, or prostitution with a person under the age of 18.

The proposal also adds the newly-defined felony offense to the following statutes:

- § 9.1-902 - Offenses requiring registration with the Sex Offender Registry (registration would be applicable for the specified offenses committed on or after July 1, 2020);
- § 17.1-805 - Definition of a violent felony offense for the purposes of Virginia’s sentencing guidelines;
- § 18.2-46.1 - Definition of a “predicate criminal act” associated with gang activity;
- § 18.2-513 - Definition of “racketeering activity” under Virginia’s RICO provisions; and
- § 19.2-215.1 – Offenses within the scope of a multi-jurisdictional grand jury.

By adding § 18.2-347 to the above statutes, the proposal expands the applicability of a number of felony offenses:

- Under § 18.2-472.1, the first Sex Offender Registry violation committed by an offender who is not defined as sexually violent is punishable as a Class 1 misdemeanor; a second or subsequent Registry violation is a Class 6 felony.

- Under § 18.2-46.2, a criminal street gang member who knowingly participates in any predicate criminal act for the benefit of, or at the direction of, the gang is guilty of a Class 5 felony. If the offender is 18 years of age or older and knows that the gang includes a juvenile member, he is guilty of a Class 4 felony. In addition, § 18.2-46.3:3 provides enhanced penalties for violations of § 18.2-46.2 committed in specified locations such as schools. Under § 18.2-46.3:1, a third or subsequent conviction for a gang offense is elevated to a Class 3 felony.
- Any person or enterprise convicted of racketeering is guilty of a felony that is punishable by imprisonment of five to forty years, while a second or subsequent offense is punishable as a Class 2 felony (20 years to life in prison). The transmission of money derived from, or traceable to, racketeering activity is punishable as a Class 6 felony (1-5 years).

The proposal also amends other sections of the *Code* to modify references to gender. In § 18.2-49, the proposal replaces “female under sixteen years of age” with “person under the age of 18” (which also expands this provision to cover 16 and 17-year-old victims). In § 18.2-368, the proposal replaces “wife” with “spouse.”

Lastly, the proposal expands the applicability of sentencing enhancements on Virginia’s sentencing guidelines. Offenders who have prior convictions for violent felony offenses, as defined in § 17.1-805, receive enhancements on the guidelines that increase the recommended sentences for those offenders.

Several statutes in the *Code* (§§ 18.2-248, 18.2-254.1, 18.2-308.2, 18.2-460, 19.2-120.1, and 19.2-303.5) contain references to § 17.1-805 in order to define a violent offender, to specify criminal penalties, to limit eligibility for a program, or to determine eligibility for release on bail. Statutes related to Virginia’s victim assistance fund (§ 19.2-368.2) and the restoration of civil rights (§ 53.1-231.2) also include references to § 17.1-805.

Analysis:

According to the General District Court Case Management System (CMS) for fiscal years 2018 and 2019, 243 offenders were convicted of a Class 1 misdemeanor under § 18.2-347 during the two-year period. Of these, 58.8% did not receive an active term of incarceration to serve after sentencing. The remaining 41.2% were sentenced to local-responsible (jail) terms with a median sentence of two months. Existing data do not contain sufficient detail to determine the number of cases in which the offender violated one of these provisions with a person under the age of 18, as specified in the proposal. Offenders who violate these provisions with a person under the age of 18 would be subject to the proposed Class 6 felony.

According to fiscal year (FY) 2014 through FY2019 Sentencing Guidelines data, two offenders were convicted under § 18.2-49 for threatening, attempting or assisting an abduction. One of these offenders received a 10-month local-responsible (jail) sentence, while the other offender did not receive an active term of incarceration to serve after sentencing. During the same six-year period, three offenders were convicted under § 18.2-368 for placing or leaving his wife in a bawdy place for the purposes of prostitution or unlawful sexual intercourse. One of these offenders received a state-responsible (prison) sentence of one year, while the two remaining offenders did not receive an active term of incarceration to serve after sentencing. Existing data do not contain sufficient detail to determine the number of cases that would be affected by the proposed expansion of these provisions.

In addition, offenders convicted of the newly-defined felony under § 18.2-347 also could be subject to the penalties associated with Sex Offender Registry violations, criminal gang activity and/or racketeering. While the number of affected offenders cannot be estimated, affected offenders may be sentenced similarly to those currently convicted under existing statutes (see table below).

Offenders Convicted of Select Felony Offenses, FY2018-FY2019

Primary Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
Felony violation of Sex Offender Registry requirements (§ 18.2-472.1)	528	19.5%	63.3%	6 months	17.2%	1.2 years
Participation in criminal act to benefit a gang - no juvenile member (§ 18.2-46.2)	20	10.0%	10.0%	9 months	80.0%	4 years
Participation in criminal act to benefit a gang with juvenile member (§ 18.2-46.2)	2	0.0%	0.0%	NA	100.0%	3.3 years
Participation in criminal act to benefit a gang with juvenile member in a gang-free zone (§ 18.2-46.3:3)	1	0.0%	0.0%	NA	100.0%	1 year
Participation in criminal act to benefit a gang (no juvenile member) in a gang-free zone (§ 18.2-46.3:3)	2	0.0%	0.0%	NA	100.0%	3.8 years
Third or subsequent gang offense (§ 18.2-46.3:1)	0	0.0%	0.0%	NA	0.0%	NA
Racketeering under Va RICO Act	35	0.0%	5.7%	7.5 months	94.3%	4.5 years

Note: Analysis is based on cases in which the specified offense was the primary, or most serious, offense in the sentencing event.

Source: Supreme Court of Virginia - Circuit Court Case Management System (CMS), FY2018-FY2019
Virginia Criminal Sentencing Commission - Sentencing Guidelines Database, FY2018-FY2019

According to Sentencing Guidelines data for fiscal year (FY) 2018 and FY2019, 15.5% of offenders scored on the sentencing guidelines received a midpoint enhancement due to a prior violent felony offense currently listed in § 17.1-805(C). By amending § 17.1-805(C) to add offenses to the definition of a violent felony, offenders who have prior convictions for any of those offenses will be recommended by the sentencing guidelines for longer terms of state-responsible incarceration. Judges comply with Virginia’s discretionary guidelines in the majority of felony cases. In FY2019, the overall guidelines compliance rate was 83.6%; however, the compliance rate in midpoint enhancement cases was somewhat lower, at 73%.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal creates a new felony prostitution-related offense, expands the applicability of a number of other felony offenses, and expands the applicability of sentencing guidelines enhancements. As such, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, the number of additional felony convictions, or potentially longer sentences, that may result from the proposal cannot be estimated; therefore, the impact of the proposal on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the impact on local-responsible (jail) bed space needs cannot be determined.

Adult community corrections resources. The potential impact on community corrections resources cannot be quantified.

Virginia's sentencing 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 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 cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 854 of the 2019 Acts of Assembly 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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