



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 39 (Patron – Ware)

LD#: 24103925

Date: 12/19/2023

Topic: Sexual intercourse with minor while on sex offender registry

Fiscal Impact Summary:

<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • Juvenile Correctional Centers: None (\$0) ** • Juvenile Detention Facilities: None (\$0) ** <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 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 proposed legislation amends § 18.2-371 to create a new felony for those who engage in consensual sexual acts with a minor while required to register with the Sex Offender and Crimes Against Minors Registry. The legislation proposes that it will be a Class 6 felony for any person 18 years of age or older who is required to register as a sex offender to engage in consensual sexual intercourse or anal intercourse with, or perform cunnilingus, fellatio, or anilingus upon or by a child 15 or older who is not his spouse, child, or grandchild.

Analysis:

Existing data sources do not contain sufficient detail to estimate the number of additional Class 6 felony convictions for engaging in consensual sexual acts with a minor while required to register as a sex offender. However, individuals convicted under this offense might be sentenced similarly to those who are convicted of a third or subsequent misdemeanor for specific sexual offenses. Currently, under § 18.2-67.5:1, when a person is convicted of misdemeanor consensual intercourse with a minor under § 18.2-371 or other specified misdemeanor sex offenses 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.¹

According to Circuit Court CMS data for fiscal year (FY) 2018 through FY2023, 72 defendants were convicted of a Class 6 felony for a third or subsequent specified misdemeanor sex offense, such as consensual sexual intercourse with a minor (see § 18.2-67.5:1). This was the primary (most serious)

¹ Under current law, felony offenses defined in § 18.2-67.5:1 are ineligible for the enhanced sentence credits specified in § 53.1-202.3; therefore, individuals convicted of these felony offenses must serve a minimum of 85% of the sentence ordered by the court.

offense for 65 of the defendants. Of these defendants, 46.2% received a state-responsible (prison) term for which the median sentence was 2.0 years. Another 46.2% received a local-responsible (jail) term with a median sentence of 6.0 months. The remaining defendants (7.7%) did not receive an active term of incarceration to serve after sentencing.

It is also possible that individuals convicted under the proposed legislation might be sentenced similarly to those who are convicted of a Class 6 felony for failing to register as a sex offender under §§ 18.2-472.1(A) and 18.2-472.1(B). According to Sentencing Guidelines data for fiscal year (FY) 2022 to FY2023, 258 offenders were convicted of a Class 6 felony for failing to register as a sex offender. Of these 258 cases, 237 had these offenses as the primary, or most serious, offense in the sentencing event. Of these 237 sentencing events, 29.1% of the defendants received no active incarceration, 62.0% received a local-responsible (jail) sentence with a median sentence of 6.0 months, and 8.9% received a state-responsible (prison) sentence with a median sentence of 1.0 year.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal creates a new 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. The new felony offense under § 18.2-371 would not initially be covered by the Sentencing Guidelines when the offense is the primary, or most serious, offense at sentencing. Additionally, felony violations of § 18.2-67.5:1 are not currently covered by the Guidelines when the crime is the primary offense. Such convictions, however, may augment the Guidelines recommendation (as additional offenses) if the most serious offense at sentencing is covered by the Guidelines. The proposed offense would not be defined as violent under § 17.1-805(C) for the purposes of the Guidelines. Additionally, a third conviction of consensual intercourse with a minor under § 18.2-67.5:1 is currently not defined as violent under § 17.1-805(C). No adjustment to the Guidelines would be necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase direct care (juvenile correctional center or alternative commitment placement) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal will not increase the bed space needs of juvenile detention facilities.

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 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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.