



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 434 Amendment in the Nature of a Substitute (Patron Prior to Substitute – Sewell)

LD#: 22106437

Date: 2/10/2022

Topic: Definition of sexual abuse

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 Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 552 of the Acts of Assembly of 2021, 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 definition of “intimate parts” in § 18.2-67.10 to specifically include the chest (including the breast) of any person. Currently, § 18.2-67.10 defines “intimate parts” as the genitalia, anus, groin, breast, or buttocks of any person. Because the term “intimate parts” is used in the definition of sexual abuse found in § 18.2-67.10, the proposed expansion of the term broadens the definition of sexual abuse.

Currently, sexual abuse is defined as an act committed with the intent to sexually molest, arouse, or gratify any person, where 1) the accused intentionally touches the complaining witness's intimate parts or material directly covering such intimate parts; 2) the accused forces the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts; 3) the accused causes or assists a complaining witness under the age of 13 to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts; or 4) the accused forces another person to touch the complaining witness's intimate parts or material directly covering such intimate parts.

By expanding the definition of sexual abuse in § 18.2-67.10, the proposal potentially expands the applicability of other provisions of the *Code* that directly or indirectly reference the definition of sexual abuse. These include:

- Aggravated sexual battery (§ 18.2-67.3; a felony punishable by 1-20 years);
- Sexual battery (§ 18.2-67.4; a misdemeanor punishable by up to 12 months);
- Sexual battery or attempted sexual battery, 3rd or subsequent offense (§ 18.2-67.5:1; a Class 6 felony);

- Indecent liberties committed by a parent, step-parent, grandparent or step-grandparent (§ 18.2-370(D); a Class 5 felony or, if the child is under the age of 15, a Class 4 felony); and
- Indecent liberties by a custodian (§ 18.2-370.1; a Class 6 felony for the first offense and a Class 5 felony for any subsequent offense)).

If the proposal results in additional convictions for the offenses listed above, the proposal would increase the number of offenders who are required to register with the Sex Offender and Crimes Against Minors Registry (§ 9.1-902). Under § 18.2-472.1, the first Sex Offender Registry violation committed by an offender who has not been convicted of a Tier III offense or murder as defined in § 9.1-902 is punishable as a Class 1 misdemeanor; a second or subsequent Registry violation is a Class 6 felony. For an offender previously convicted of a Tier III offense or murder, the first Registry violation is a Class 6 felony, while a subsequent violation is a Class 5 felony.

Analysis:

Existing data do not contain sufficient detail to determine the number of cases that would be affected by the proposal. However, affected offenders may be sentenced similarly to those who are currently convicted of the specific offenses listed above (see table).

Offenders Convicted of Specified Felony Offenses, FY2020-FY2021

Primary Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
Sexual battery (§ 18.2-67.4) ³	110	37.3%	62.7%	3 mos.	na	na
Sexual battery or att. sexual battery, 3 rd or subsequent offense (§ 18.2-67.5:1) ²	1	0.0%	100.0%	5 mos.	0.0%	na
Aggravated sexual battery (§ 18.2-67.3) ¹	284	8.8%	7.4%	3 mos.	83.8%	5 yrs.
Indecent liberties committed by a parent, etc. - child 15-17 years of age (§ 18.2-370(D)) ²	4	25.0%	0.0%	na	75.0%	2.5 yrs.
Indecent liberties committed by a parent, etc. - child under 15 years of age (§ 18.2-370(D)) ²	8	12.5%	12.5%	0.5 mos.	75.0%	3.5 yrs.
Indecent liberties by a custodian, 1 st offense (§ 18.2-370.1) ¹	59	15.3%	23.7%	7 mos.	61.0%	3.0 yrs.
Indecent liberties by a custodian, 2 nd or sub. offense (§ 18.2-370.1) ²	0	na	na	na	na	na
Sex Offender Registry violation: Not Tier III/murder, 1 st offense ³	265	50.9%	49.1%	1.8 mos.	na	na
Sex Offender Registry violation: Not Tier III/murder, 2 nd or subsequent offense (§ 18.2-472.1) ¹	52	23.1%	69.2%	3 mos.	7.7%	1.4 yrs.
Sex Offender Registry violation: Tier III/murder, 1 st offense (§ 18.2-472.1) ¹	166	22.3%	63.3%	6 mos.	14.4%	1.0 yrs.
Sex Offender Registry violation: Tier III/murder, 2 nd or subsequent offense (§ 18.2-472.1) ¹	183	12.6%	63.9%	3 mos.	23.5%	1.3 yrs.

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

Sources: ¹ Virginia Criminal Sentencing Commission - Sentencing Guidelines Database, FY2020-FY2021;

² Supreme Court of Virginia - Circuit Court Case Management System (CMS), FY2020-FY2021; and

³ Supreme Court of Virginia - General District Court Case Management System (CMS), FY2020-FY2021

Impact of Proposed Legislation:

State adult correctional facilities. Because it expands the applicability of several existing felonies, the proposed legislation may increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing databases do not provide sufficient detail to estimate the number of new felony convictions that may result from enactment of the proposal. Thus, the magnitude of the impact on prison beds cannot be quantified.

Local adult correctional facilities. Similarly, the proposal may also increase the local-responsible (jail) bed space needs of the Commonwealth. However, 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 resources cannot be quantified.

Virginia’s Sentencing Guidelines. Felony convictions under § 18.2-67.3, § 18.2-370.1 (first offense), and § 18.2-472.1 are covered by the Sentencing Guidelines as the primary, or most serious, offense. Convictions under other affected statutes are not covered by the Guidelines as the most serious offense. Such convictions, however, could augment the Guidelines recommendation if the most serious offense at sentencing is a Guidelines-covered offense. 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 an 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 552 of the Acts of Assembly of 2021, 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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