



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill 914 (Patron - Stanley)

LD#: 25104129

Date: 12/30/2024

Topic: Sexual assault of a child

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$18,140,089 (330 beds)*
- **Local Adult Correctional Facilities:**
-\$ 93,139 (-5 beds)
- **Adult Community Corrections Programs:**
None (\$0)

- **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 amends several sections in the *Code of Virginia* to establish a mandatory sentence of life in prison, without the possibility of parole, for certain sexual assault offenses.¹ Specifically, the proposal requires a mandatory minimum sentence of life without the possibility of parole for:

- Rape of a child under the age of 13 when the offender is more than three years older than the victim and the rape offense is committed in conjunction with certain kidnapping, burglary, or malicious wounding offenses (current mandatory minimum is 25 years);
- Forcible sodomy of a child under the age of 13 when the offender is more than three years older than the victim and the sodomy offense is committed in conjunction with certain kidnapping, burglary, or malicious wounding offenses (current mandatory minimum is 25 years);
- Forcible sodomy of a child under the age of 13 when it is alleged in the indictment that the offender was 18 years of age or older at the time of the offense (current mandatory minimum is life but the proposal specifies life without the possibility of parole);
- Object sexual penetration of a child under the age of 13 when the offender is more than three years older than the victim and the sodomy offense is committed in conjunction with certain kidnapping, burglary, or malicious wounding offenses (current mandatory minimum is 25 years);

¹ Under current law, criminal sexual assault felonies defined in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 are ineligible for the enhanced sentence credits specified in § 53.1-202.3; therefore, individuals convicted of any felony offenses under §§ 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-67.3, or 18.2-67.4:2 must serve a minimum of 85% of the sentence ordered by the court.

- Object sexual penetration of a child under the age of 13 when it is alleged in the indictment that the offender was 18 years of age or older at the time of the offense (current mandatory minimum is life but the proposal specifies life without the possibility of parole);
- Aggravated sexual battery where the victim is 18 years of age or younger (currently a felony punishable by 1 to 20 years); and
- Sexual abuse of a child under 15 years of age (currently a Class 1 misdemeanor).

Analysis:

According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2023 and FY2024, at least 309 offenders were convicted under § 18.2-67.3 for aggravated sexual battery involving a minor as the primary, or most serious, offense at sentencing.² Of these defendants, 8.7% did not receive an active term of incarceration, and 4.5% received a local-responsible (jail) term with a median sentence of 7.0 months, while the majority (86.7%) received a state-responsible (prison) term for which the median sentence was 5.0 years.

According to Juvenile and Domestic Relations Court CMS data for the same two-year period, 10 offenders were convicted of a Class 1 misdemeanor under § 18.2-67.4:2 for sexual abuse of a child under 15 years of age. Four (40%) of these defendants received probation without an active term of incarceration, while six (60%) received a local jail term with a median sentence of 1.5 months.

The proposed penalties for rape, forcible sodomy, and object sexual penetration will not have an impact during the six-year forecast window required by § 30-19.1:4.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal establishes a mandatory sentence of life in prison for several sexual assault offenses against children. The proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. The impact is estimated to be at least 330 beds by FY2031. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$18,140,089. Available data are insufficient to determine the total number of offenders who may be subject to the proposed mandatory minimum penalties. The proposal may have additional impacts beyond the six-year forecast window specified by § 30-19.1:4.

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

FY26	FY27	FY28	FY29	FY30	FY31
12	41	83	143	223	330

Local adult correctional facilities. The proposal is expected to decrease the future need for local-responsible (jail) beds, since offenders who received a jail term in the past will receive a prison sentence under the proposal. The impact on local-responsible (jail) beds is estimated to be a decrease of five beds by FY2031 (state savings: \$93,139; local savings: \$143,424).

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

FY26	FY27	FY28	FY29	FY30	FY31
-3	-4	-5	-5	-5	-5

Adult community corrections programs. The proposal is not expected to increase the need for

² This is the “at least figure” based on existing Virginia Crime Codes (VCCs). As other aggravated sexual assault felonies defined under § 18.2-67.3 may involve a complaining witness that is 18 years of age or younger, the actual number may be greater than this.

community corrections resources and will delay the need for services for some offenders, as they will remain incarcerated longer prior to being released to the community.

Virginia’s Sentencing Guidelines. Most felonies under §§ 18.2-61, 18.2-67.1, 18.2-67.2, and 18.2-67.3 are covered by the Sentencing Guidelines. Misdemeanor offenses, such as the Class 1 misdemeanor defined in § 18.2-67.4:2, are not covered by the Guidelines. Convictions that are not covered by the Sentencing Guidelines as the primary, or most serious, offense could augment the Guidelines recommendation as additional offenses if the most serious offense at sentencing is covered by the Guidelines. No immediate adjustment to the Guidelines would be necessary under the proposal. If the proposal is enacted, the Sentencing Commission in the future would conduct analyses to determine the feasibility of adding the proposed new felony to the Guidelines system. The felonies under §§ 18.2-61, 18.2-67.1, 18.2-67.2, and 18.2-67.3 are defined as violent under § 17.1-805(C) for Guidelines purposes. The Class 1 misdemeanor offense under § 18.2-67.4:2 is not currently defined as violent under § 17.1-805(C) as that section only applies to felonies.

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 \$18,140,089 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 2024.
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 2024.
3. Cost per prison bed was assumed to be \$54,915 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 FY2023 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$56.38 per day or \$20,593 per year. The local cost was calculated by using the daily expenditure cost of \$148.62 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 \$86.82 per day or \$31,711 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 sentencing events during FY2023-FY2024 in which a felony sexual assault offense involving a minor under 18 years of age or younger under §§ 18.2-61 (B,1), 18.2-67.1(B,1), 18.2-67.2 (B,1), and 18.2-67.3 was the primary, or most serious, offense. Defendants convicted of these offenses will be affected by the proposed legislation. Other additional individuals, however, who may be also affected by the proposal could not be identified with available data.
2. The Commission identified all sentencing events during FY2023-FY2024 in which a Class 1 misdemeanor under § 18.2-67.4:2 was the primary, or most serious, offense.

Assumptions relating to sentencing and time served

1. The impact of the proposed legislation, which would be effective on July 1, 2025, is phased in to account for case processing time.
2. Identified offenders who received sentences less than the proposed mandatory minimums were assumed to receive the mandatory minimum term specified in the proposal.
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 under current law were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of August 30, 2024. Individuals convicted of felony sexual assaults listed in § 53.1-202.3(A) earn a maximum of 4.5 days for every 30 days served. For these offenses, the average rate of earned sentence credits on August 30, 2024, was 11.23%. Sentence credits do not reduce the time that must be served by individuals serving a life sentence.

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