



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill 2301 (Patron – Earley)

LD #: 25104138

Date: 01/07/2025

Topic: Crimes against nature

#### Fiscal Impact Summary:

<ul style="list-style-type: none"> <li>• <b>State Adult Correctional Facilities:</b> \$50,000 *</li> <li>• <b>Local Adult Correctional Facilities:</b> Cannot be determined</li> <li>• <b>Adult Community Corrections Programs:</b> Cannot be determined</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Juvenile Direct Care:</b> Cannot be determined**</li> <li>• <b>Juvenile Detention Facilities:</b> Cannot be determined**</li> </ul> <p>**Provided by the Department of Juvenile Justice</p>
---	---

\* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2024, 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 amends §§ 18.2-361(B) and 18.2-370 to expand the list of family members with whom it is unlawful to engage in sodomy or take indecent liberties.

Currently, under § 18.2-361(B), it is a Class 5 felony to perform or cause to be performed cunnilingus, fellatio, anilingus, or anal intercourse upon or by a daughter or granddaughter, son or grandson, brother or sister, or father or mother; the offense becomes a Class 3 felony if a parent or grandparent commits any such act with a child or grandchild that is between the ages of 13 and 17.<sup>1</sup> The proposal adds “nephew or niece” and “uncle or aunt” to the list of family members for both the Class 5 and Class 3 felonies.

Currently, it is a Class 5 felony under § 18.2-370(D) for a parent, step-parent, grandparent, or step-grandparent to take indecent liberties with his child, step-child, grandchild, or step-grandchild when such child is between 15 and 17 years of age; the offense becomes a Class 4 felony if the child, step-child, grandchild, or step-grandchild is less than 15 years of age.<sup>1</sup> The proposal adds “uncle or aunt” as the perpetrator and “nephew or niece” as the victim of such offenses for both the Class 5 and Class 4 felonies.

<sup>1</sup> Under current law, the felony offenses defined in § 18.2-361(B) are not eligible for the enhanced sentence credits specified in § 53.1-202.3; therefore, offenders will serve a minimum of 85% of the sentence ordered by the court. The proposed legislation does not change the earned sentence credits available to offenders convicted of these felonies.

---

**Analysis:**

Existing data sources do not contain sufficient detail to identify the number of individuals who would be affected by the proposal. However, individuals convicted of the proposed felonies may be sentenced similarly to offenders convicted under existing provisions.

According to Sentencing Guidelines data for fiscal year (FY) 2019 through FY2024, 17 offenders were convicted of the Class 3 felony under § 18.2-361(B) for acts of incest with a child. This was the primary, or most serious, offense in five of the cases. All five of these defendants received a state-responsible (prison) term for which the median sentence was 5.0 years.

According to Circuit Court Case Management System (CMS) data for FY2019 through FY2024, 15 offenders were convicted of the Class 5 felony under § 18.2-361(B) for other acts of incest. This was the primary, or most serious, offense in five of the cases. Of these defendants, two (40.0%) did not receive any active term of incarceration, and three (60.0%) received a state prison term with a median sentence of 2.0 years.

Based on Circuit Court CMS data for the same six-year period, 122 offenders were convicted of the Class 4 felony under § 18.2-370(D) for indecent liberties with a child or grandchild under the age of 15. This was the primary, or most serious, offense in 31 of the cases. Of these defendants, four (12.9%) did not receive an active term of incarceration and four (12.9%) received a local-responsible (jail) term with a median sentence of 5.0 months. Lastly, 23 (74.2%) received a state prison term with a median sentence of 2.0 years. Another 30 offenders were convicted of the Class 5 felony under § 18.2-370(D) for indecent liberties with a child or grandchild who was 15 years of age or older. This was the primary, or most serious, offense in nine of the cases. One (11.1%) of these defendants did not receive an active term of incarceration and three (33.3%) received a local jail term with a median sentence of 8.0 months. For the five defendants (55.6%) who received a state prison term, the median sentence was 4.0 years.

---

**Impact of Proposed Legislation:**

**State adult correctional facilities.** By expanding the applicability of existing Class 3, Class 4, and Class 5 felonies, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Available data are insufficient, however, to identify the additional number of defendants who may be convicted of felonies or to estimate the number of new state-responsible sentences that may result from enactment of the proposal. Thus, the magnitude of the impact on prison bed space needs cannot be determined.

**Local adult correctional facilities.** Similarly, the proposal may increase local-responsible (jail) bed space needs, but the magnitude of the impact cannot be quantified.

**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 estimated.

**Virginia's Sentencing Guidelines.** Currently, convictions for the Class 3 felony enumerated in § 18.2-361(B) are covered by the Sentencing Guidelines, and the proposal would potentially increase the number of defendants receiving a Guidelines recommendation if this is the primary, or most serious, offense at sentencing. Convictions for the Class 5 felony under § 18.2-361(B) and convictions under § 18.2-370(D) are not currently covered by the Guidelines. Such convictions, however, could augment the Guidelines recommendation as additional offenses if the most serious offense at sentencing is covered by the

Guidelines. All felonies affected by the proposal are defined as violent under § 17.1-805(C) for Guidelines purposes. No immediate adjustment to the Guidelines would be 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 2 of the Acts of Assembly of 2024, 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.**

incest02\_4138