



Fiscal Impact Statement for Proposed Legislation
Virginia Criminal Sentencing Commission

House Bill 2288
(Patron – Coyner)

LD#: 25104218

Date: 1/9/2025

Topic: Unlawful dissemination of intimate images of another

<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 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 § 18.2-386.2, related to the unlawful dissemination of images of another. Currently, under § 18.2-386.2, it is a Class 1 misdemeanor for any person, with the intent to coerce, harass, or intimidate, to maliciously disseminate or sell any videographic or still image of another person who is nude or in a state of undress with certain areas exposed, or in an otherwise obscene image, when they are not authorized to do so. The proposal creates a tiered system of penalties for such offenses, including several new felonies.¹ Specifically, the proposal:

- Changes “videographic or still image” to “intimate image” and defines such images, which would include computer generated images to falsely depict another person;
- Makes it a Class 1 misdemeanor to disseminate images of another without the intent is to cause physical, mental, economic, or emotional harm to the individual or to gain pecuniary benefit, with any second or subsequent offense punishable as a Class 6 felony;
- Increases the current offense from a Class 1 misdemeanor to a Class 6 felony if the intent is to cause physical, mental, economic or emotional harm or gain pecuniary benefit, with any second or subsequent offense punishable as a Class 5 felony; and
- Further increases the penalty for the current offense if the perpetrator selects the person against whom this crime is committed because of such person’s race, religious conviction, gender,

¹ Under current law, felony obscenity offenses under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, except for a violation of § 18.2-374.1:1 (A), are ineligible for the enhanced sentence credits specified in § 53.1-202.3; therefore, individuals convicted of the proposed felony offenses will serve a minimum of 85% of the sentence ordered by the court.

disability, gender identity, sexual orientation, color, or ethnic or national origin (Class 5 felony for the first offense and a Class 4 felony for any second/subsequent offense).

- Requires “affirmative consent” from the victim for dissemination of these images.
- Adds a stipulation that the venue for prosecution may include the jurisdiction where the victim resides or the jurisdiction where any of the images were produced, stored, or possessed.

The proposal also amends § 19.2-8 to state that prosecution of this offense shall be within five years of the commission of the offense or within three years of the victim discovering the offense.

Analysis:

According to General District Court Case Management System (CMS) data for fiscal year (FY) 2019 to FY2024, 174 defendants were convicted of a Class 1 misdemeanor under § 18.2-386.2 for unlawfully disseminating images of another. More than half (56.9%) of the defendants received probation without an active term of incarceration. For the 43.1% of defendants who received a local-responsible (jail) term, the median sentence was 1.0 month.

Impact of Proposed Legislation:

State adult correctional facilities. By creating new felony offenses, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Available data are insufficient, however, to identify the number of defendants who may be convicted of the proposed 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. As new felonies, convictions for the proposed offenses initially would not be covered by the Sentencing Guidelines as the primary (or most serious) offense. Such convictions, however, could augment the Guidelines recommendation as additional offenses if the most serious offense at sentencing is covered by the Guidelines. The proposed felonies would not be defined as violent under § 17.1-805(C) for Guidelines purposes. 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 new felonies to the Guidelines system.

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.

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