



Fiscal Impact Statement for Proposed Legislation
Virginia Criminal Sentencing Commission

House Bill 2763
(Patron – Earley)

LD#: 25101200

Date: 11/22/2024

Topic: Prostitution; offering money for sexual acts

- **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 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 § 18.2-346.01 to increase the penalty for a third or subsequent offense of soliciting a prostitute (offering money for sexual acts) from a Class 1 misdemeanor to a Class 6 felony. The proposal also raises the penalty for soliciting prostitution from any minor to a Class 5 felony. Lastly, the proposal amends §§ 16.1-69.48:6 and 17.1-275.13 to increase the fees for offenses related to sex trafficking.

Currently, under § 18.2-346.01, it is a Class 1 misdemeanor for any person to offer money for the purpose of engaging in any sexual act enumerated in § 18.2-346. The penalty becomes a Class 6 felony if the person solicits a minor 16 years of age or older and a Class 5 felony if the person solicits a minor under the age of 16.¹

Analysis:

Existing data sources do not contain sufficient detail to estimate either the number of additional Class 6 felony convictions for a third or subsequent offense of soliciting a prostitute (Class 1 misdemeanor) or the number of additional Class 5 felony convictions for soliciting a minor for prostitution that may result from enactment of the proposal. Section 18.2-346.01, which is specific to the offering of money for

¹ Under current law, the felony offenses defined in § 18.2-346.01 are ineligible for the enhanced sentence credits specified in § 53.1-202.3; therefore, individuals convicted of this offense must 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 this felony.

sexual acts, became effective July 1, 2021 (FY2022). Prior to July 1, 2021, accepting money for sexual acts and offering money for sexual acts were both covered by § 18.2-346.

Although data is insufficient to determine the number of third or subsequent offenses, there have been a number of convictions under § 18.2-346.01 since its enactment on July 1, 2021. According to General District Court Case Management System (CMS) data for fiscal year (FY) 2023 to FY2024, 105 defendants were convicted under § 18.2-346.01 for solicitation of prostitution from an adult. Of these defendants, 81 (77.1%) did not receive any active term of incarceration, and 24 (22.9%) received a local-responsible (jail) sentence with a median sentence of 0.8 months.

According to Circuit Court Case Management System (CMS) data for fiscal year (FY) 2023 to FY2024, 19 defendants were convicted under § 18.2-346.01 for solicitation of prostitution from a minor. The majority of these cases involved the Class 6 felony for soliciting a minor 16 years of age or older; one case involved an attempt of the Class 5 felony for the solicitation of a minor under the age of 16. This was the primary, or most serious, offense in 15 (78.9%) of the cases. Of these defendants, six (40.0%) did not receive any active term of incarceration, six (40.0%) received a local-responsible (jail) sentence with a median sentence of 1.2 months, and three (20.0%) received a state-responsible (prison) sentence with a median sentence of 2.5 years.

Individuals convicted of the proposed felony for a third or subsequent offense of soliciting a prostitute may be sentenced similarly to individuals sentenced under existing provisions. Under § 18.2-67.5:1, when a person is convicted of misdemeanor sexual battery or another specified misdemeanor sex offense 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), they are guilty of a Class 6 felony. According to data from the Circuit Court Case Management System (CMS) for fiscal year (FY) 2019 to FY2024, 57 defendants were convicted of a Class 6 felony for a third or subsequent misdemeanor sex offense (§ 18.2-67.5:1). This was the primary, or most serious, offense in 52 (91.2%) of the cases. Of these defendants, four (7.7%) did not receive any active term of incarceration, 25 (48.1%) received a local-responsible (jail) sentence with a median sentence of 6.0 months, and 23 (44.2%) received a state-responsible (prison) sentence with a median sentence of 1.5 years.

Impact of Proposed Legislation:

State adult correctional facilities. By establishing a new felony offense and increasing the penalty for an existing felony under certain circumstances, the proposal may increase the future 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. Felony convictions under § 18.2-346.01 are not currently covered by the Sentencing Guidelines. Such convictions, however, could augment the Guidelines recommendation as additional offenses if the most serious offense at sentencing is covered by the Guidelines. The current

felonies 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.

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