



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill 989 (Patron—Garrett)

LD#: 26104268

Date: 12/11/2024

Topic: Child sexual abuse

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$1,038,276 (18 beds)
- **Local Adult Correctional Facilities:**
At least -\$34,915 (-2 bed)
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
None (\$0)*
- **Juvenile Detention Facilities:**
None (\$0)*

* Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposal modifies § 18.2-67.4:2, relating to the sexual abuse of a 13- or 14-year-old child. Currently, an adult who, with lascivious intent, commits an act of sexual abuse with any 13- or 14-year-old child is guilty of a Class 1 misdemeanor, punishable by up to 12 months in jail. The proposal increases the penalty for this offense to a Class 6 felony, punishable by up to five years imprisonment in a state correctional facility.¹

Analysis:

According to Fiscal Year (FY) 2024 and FY2025 data from the Circuit Court and Juvenile and Domestic Relations Court Case Management Systems (CMS), a total of 18 offenders were convicted of a misdemeanor under § 18.2-67.4:2 for sexually abusing a 13 or 14-year-old child as the primary, or most serious, offense. In 66.7% of the cases, the offender did not receive an active term of incarceration to serve after sentencing. In the remaining 33.3% of cases, the offender was sentenced to a local-responsible (jail) term with a median sentence of nine months. Offenders whose charges were brought to circuit court as the result of an appeal from Juvenile and Domestic Relations (JDR) Court were excluded.

Impact of Proposed Legislation:

State adult correctional facilities. By increasing the penalty for sexual abuse of a 13 or 14-year-old child from a Class 1 misdemeanor to a Class 6 felony, the proposal is expected to increase the future

¹ Under current law, any criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 is ineligible for the enhanced sentence credits specified in § 53.1-202.3; therefore, individuals convicted of the proposed felony offense must serve a minimum of 85% of the sentence ordered by the court.

state-responsible (prison) bed space needs of the Commonwealth. The impact is estimated to be at least 18 beds statewide by FY2032. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$1,038,276. This estimate was generated using a statistical simulation model that forecasts future sentencing behavior given a certain set of assumptions about future costs and sentencing practices. To see the assumptions employed in the model, see the postscript at the end of this fiscal impact statement.

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

FY26	FY27	FY28	FY29	FY30	FY31
5	9	12	15	17	18

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 may receive a prison sentence under the proposal. The impact on local-responsible (jail) beds is estimated to be a decrease of at least one bed by FY2031 (state savings: at least \$34,915; local savings: at least \$54,267).

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

FY26	FY27	FY28	FY29	FY30	FY31
-1	-2	-2	-2	-2	-2

Adult community corrections programs. Because the proposal could result in additional felony convictions and subsequent supervision requirements for some offenders, the proposal may increase the need for state community corrections resources. The impact on community corrections programs cannot be estimated.

Virginia's Sentencing Guidelines. As a new felony in the *Code of Virginia*, the Sentencing Guidelines would not cover violations of § 18.2-67.4:2. Convictions for this crime may augment the Guidelines recommendation if the most serious offense at sentencing is covered by the Guidelines. The proposed Class 6 felony 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 felony to the Guidelines system.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase juvenile correctional center bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$766,778 for periods of imprisonment in state adult correctional facilities and is \$0 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 2025.
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 2025.
3. Cost per prison bed was assumed to be \$58,189 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 FY2024 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$58.25 per day or \$21,279 per year. The local cost was calculated by using the daily expenditure cost of \$154.31 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 \$90.55 per day or \$33,073 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. Eligible offenders were identified as those whose primary offense was a conviction under § 18.2-67.4:2 in JDR Court or Circuit Court (there were no convictions under this statute in General District Court).

Assumptions relating to sentencing

1. The impact of the proposed legislation, which would be effective on July 1, 2026, is phased in to account for case processing time.
2. It was assumed that prosecutors would charge all eligible offenders under the proposed felony provision.
3. To gauge the impact on sentencing, it was assumed that the distribution of sentences for the affected cases will be similar to the distribution of sentences under the existing Class 6 felony provision for a custodian taking indecent liberties with a child as defined in § 18.2-370.1(A).
4. 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 were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of August 30, 2024. Beginning July 1, 2022, most nonviolent felons were eligible for higher rates of earned sentence credits (up to 15 days for every 30 days served, see § 53.1-202.3). However, felons convicted of violent crimes defined under § 53.1-202.3 (A) still earn a maximum of 4.5 days for every 30 days served. For criminal sexual assault offenses, the average rate of earned sentence credits was 11.02 %.

Limitations

1. The JDR Court data used for the current analysis only include adults convicted in JDR.

sexabuse01_4268