



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 228 (Patron – Obenshain)

LD#: 22101902

Date: 12/27/2021

Topic: Mandatory minimum sentences for certain offenses against children

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$125,857 (3 beds)
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Programs:**
None (\$0)

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

* Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposal amends § 18.2-374.3, relating to electronic solicitation of a minor, to require the mandatory minimum sentences specified in this section to run consecutively with any other sentence the defendant receives. Currently, § 18.2-374.3 specifies the following penalties:

Code Section	Description	Statutory Penalty Range	Mandatory Minimum Sentence
18.2-374.3(C)	Propose sex act by communication system, victim age <15	1-10 yrs.	None
18.2-374.3(C)	Propose sex act by communication system, victim age <15, offender 7+ yrs older	5-30 yrs.	5 yrs.
18.2-374.3(C)	Propose sex act by communication system, victim age <15, offender 7+ yrs older, 2 nd offense	10-40 yrs.	10 yrs.
18.2-374.3(D)	Propose sex act by communication system, victim age 15+, offender 7+ yrs older	1-10 yrs.	None
18.2-374.3(D)	Propose sex act by communication system, victim age 15+, offender 7+ yrs older, 2 nd offense	1-20 yrs.	1 yr.

At present, §§ 18.2-374.3(C) and 18.2-374.3(D) are silent as to whether the mandatory minimum sentences must be served consecutively.

The proposal would require that any mandatory minimum term of confinement imposed for violation of §§ 18.2-374.3(C) or 18.2-374.3(D) must be served consecutively with any other sentence received.

Analysis:

According to the fiscal year (FY) 2020 and FY2021 Sentencing Guidelines data, 122 sentencing events included at least one conviction for an offense under §§ 18.2-374 (C) or 18.2-374 (D) that carries a mandatory minimum penalty (includes only completed acts). Of these, 17 offenders received a sentence below the total amount of time that the offender would have received if the mandatory minimum terms were run consecutively. The primary, or most serious, offense in all of these cases was a completed violation of § 18.2-374(C) [proposing a sex act by communications system, victim age less than 15, offender at least seven years older, 1st or 2nd offense]. The median increase in sentence length if the mandatory minimum terms were run consecutively for these offenders was 10 years.

Data are insufficient to identify other cases that would be affected by the proposal, such as the cases in which a mandatory minimum term was run concurrently with a sentence for another offense but the overall sentence was higher than the total of the mandatory minimums.

Impact of Proposed Legislation:

State adult correctional facilities. By requiring that the mandatory minimum terms specified in §§ 18.2-374.3 (C) and 18.2-374.3 (D) run consecutively with any other sentence received, the proposal is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. Existing databases do not contain sufficient information to determine if offenses carrying a mandatory minimum term were run concurrently with offenses that do not carry a mandatory minimum. As a result, this portion of the impact could not be estimated. However, cases in which offenders received a sentence that was lower than the sum of mandatory minimum terms could be identified. The increase in the prison bed space needs is expected to be at least three beds by FY2028. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$125,857.

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

FY23	FY24	FY25	FY26	FY27	FY28
0	0	0	0	0	3

Local adult correctional facilities. The proposal is not expected to impact the need for local-responsible (jail) beds, since offenders affected by the proposal are already being sentenced to a state-responsible (prison) term.

Adult community corrections resources. The proposal is not expected to increase the need for community corrections resources and will likely delay the need for services for some offenders affected by the proposal, as they will stay in prison longer prior to being released to the community.

Virginia's Sentencing Guidelines. Convictions under § 18.2-374.3 are covered by the Sentencing Guidelines as the primary, or most serious, offense. No immediate adjustment to the Guidelines would be necessary under the proposal. However, if the proposal is enacted, the Sentencing Commission in the future would conduct detailed analyses of sentencing patterns to determine if revisions to the Guidelines are necessary.

Juvenile direct care. According to the Department of Juvenile Justice, the proposal is not expected to impact direct care (juvenile correctional center or alternative commitment placement) bed space needs.

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

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$125,857 for periods of imprisonment in state adult correctional facilities and \$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 2021.
2. Because the Secretary of Public Safety's Committee on Inmate Forecasting did not adopt a state-responsible admissions forecast in 2021, admissions were assumed to remain flat during the forecast horizon.
3. Cost per prison bed was assumed to be \$36,305 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.*

Assumptions relating to affected cases

1. Analysis includes all cases involving a completed offense under §§ 18.2-374.3 (C) or 18.2-374.3 (D), requiring a mandatory minimum term, as the primary (most serious) offense or as an additional offense to a more serious felony.
2. Cases were selected for inclusion in the analysis based on the Virginia Crime Codes (VCCs) recorded on the cover sheet of the Sentencing Guidelines forms submitted to the Sentencing Commission.

Assumptions relating to sentencing and time served

1. The impact of the proposed legislation, which would be effective on July 1, 2022, is phased in to account for case processing time.
2. Offenders affected by the proposal and identified for inclusion in the analysis were assumed to serve the mandatory minimum terms at least concurrently. Then, these affected offenders were assumed, after the enactment of proposal, to serve the mandatory minimum terms as if they were run consecutively.
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 were estimated based on the average rates at which inmates in the Department of Corrections' facilities were earning sentence credits as of December 31, 2020. For felons serving a prison term for sex offenses, this rate was 7.55%.

mandmin01_1902