



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 249 Amendment in the Nature of a Substitute (Patron Prior to Substitute – Surovell)

LD #: 22106117

Date: 02/07/2022

Topic: Sexual abuse of animals, penalties

Fiscal Impact Summary:

- **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 552 of the Acts of Assembly of 2021, 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 adds § 18.2-361.01 to the *Code of Virginia*, related to carnal knowledge of a brute animal in terms of the penalties associated with such a crime.

Currently, it is a Class 6 felony under § 18.2-361(A) to carnally know, in any manner, any brute animal or voluntarily submit to such carnal knowledge. The proposal prohibits other acts with an animal to include any person who (ii) causes another person by force, threat, or intimidation to engage in sexual contact with an animal, (iii) advertises, solicits, offers, sells, purchases, or possesses an animal with intent that the animal be subject to sexual contact, (iv) permits sexual contact with an animal to be conducted on any premises under his ownership or control, (v) produces, distributes, publishes, sells, transmits, finances, possesses, possesses with the intent to distribute, publish, sell, or transmit, or makes any attempt to produce, distribute, publish, sell, transmit, or finance an obscene item depicting a person engaged in sexual conduct with an animal, which would be guilty of a Class 6 felony under a new statute code §18.2-361.01.

Furthermore, the proposal provides that any person convicted of such a crime under the proposed

§18.2-361.01 may be prohibited from possessing, owning, or exercising control over any animal and may be ordered to attend an appropriate treatment program or obtain psychiatric or psychological counseling.

Analysis:

Existing data sources do not contain sufficient detail to identify the number of additional individuals who, if the proposal were enacted, would be convicted of a Class 6 felony offense under § 18.2-361.01. However, affected offenders may be sentenced similarly to those sentenced under existing provisions of § 18.2-361(A).

According to the Sentencing Guidelines database for fiscal year (FY) 2016 through FY2021, 15 offenders were convicted of a Class 6 felony under § 18.2-361(A) for carnal knowledge of a brute animal. This offense was the primary, or most serious, offense in 14 of the 15 cases. One third (33.3%) of these offenders did not receive an active term of incarceration to serve after sentencing. Three of these offenders (20.0%) received a local-responsible (jail) term with a median sentence of 3 months. The remaining seven offenders (46.7%) were given a state-responsible (prison) term with a median sentence of 2.0 years.

The evaluation of Sentencing Guidelines data yielded secondary offenses aligned with the possession or sale of obscene materials under § 18.2-376.1 and § 18.2-374, each of which are currently Class 1 misdemeanors. The proposal would encompass the commission of these crimes in relation to the possession, sale, etc. of obscene materials related to the carnal knowledge of an animal and make said offenses punishable as a Class 6 felony. According to the Circuit Court Case Management System (CMS) for FY2020 and FY2021, there was only one sentencing event in which one of these two statutes were violated and the offender received a 1-year sentence of supervised probation. Under the proposal, if found guilty of the same offense, this offender will be guilty of a Class 6 felony punishable by 1 to 5 years in state prison.

Impact of Proposed Legislation:

State adult correctional facilities. By creating a new felony, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, data do not contain sufficient detail to estimate the number of individuals likely to be affected by the proposal. Therefore, the magnitude of the impact cannot be determined.

Local adult correctional facilities. Similarly, the impact of the proposal on local-responsible (jail) bed space needs cannot be determined.

Adult community corrections resources. The impact on state community corrections resources and local community-based probation services cannot be estimated.

Virginia's sentencing guidelines. Felony convictions under the existing statute § 18.2-361(A) are covered under Sentencing Guidelines. If the proposal were enacted, the Sentencing Commission in the future would conduct detailed analyses of sentencing patterns under the new statute § 18.2-361.01 to determine the feasibility of adding and/or adjusting sentencing guidelines to align with sentencing practices as a result of the passing of this proposal.

Juvenile direct care. According to the Department of Juvenile Justice (DJJ), 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 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 552 of the Acts of Assembly of 2021, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4 of the Code of Virginia, 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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