



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1817 (Patron – Delaney)

LD#: 19100096

Date: 10/09/2018

Topic: Promoting travel for prostitution

Fiscal Impact Summary:

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| <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 2018, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal adds section § 18.2-348.1 to the *Code of Virginia* and amends §§ 2.2-515.2, 8.01-42.4, 18.2-513, 19.2-10.2, 19.2-386.16 and 19.2-386.35 to reference the proposed statute. Under the proposal, promoting travel for prostitution would be defined by § 2.2-515.2 as “sexual violence” conduct and as “racketeering activity” under § 18.2-513. As proposed, a convicted offender could be subject to civil action for trafficking in persons under § 8.01-42.4 and any motor vehicle or other property involved in the offense could be forfeited or seized under §§ 19.2-386.16 and 19.2-386.35. Attorneys for the Commonwealth or the Attorney General, under the proposal, may obtain administrative subpoenas for electronic communication or remote computing services for suspected promotion of travel for prostitution.

Under the proposal, it would be unlawful to knowingly sell or offer "travel services" (e.g., transportation by carrier; accommodations; rental of motor vehicles; or any other service related to travel) for prostitution or unlawful sexual intercourse. Violation of this provision is punishable as a Class 5 felony. By including this offense as racketeering activity, violations may be subject to RICO penalties. Any person or enterprise convicted of racketeering is guilty of a felony that is punishable by imprisonment for not less than 5 years nor more than 40 years and a fine of not more than \$1 million. A second or subsequent offense is punishable as a Class 2 felony (20 years to life in prison) and a fine of not more than \$2 million. The transmission of money derived from, or traceable to, racketeering activity is punishable as a Class 6 felony (1-5 years). The General Assembly passed the RICO Act in 2004; amendments to § 18.2-513 were made most recently in 2013 (adding contraband cigarette violations) and 2015 (adding commercial sex trafficking).

Analysis:

Existing data sources do not contain sufficient detail to identify the number of individuals who would be convicted of a felony under § 18.2-348.1 or under RICO provisions if the proposal were enacted.

Offenders convicted under the proposed § 18.2-348.1 may be sentenced similarly to those currently convicted under § 18.2-357.1(A), commercial sex trafficking of adults without the use of force, intimidation, or deception. According to Circuit Court Case Management System (CMS) data for FY2017 and FY2018, 34 individuals were convicted of § 18.2-357.1(A) during the two-year time period. This offense was the primary, or most serious, offense in 24 cases. Of these 24 offenders, 17 (71%) received a state-responsible (prison) sentence with a median sentence of 1.8 years. Five (21%) of the offenders received a local-responsible (jail) term for which the median sentence was six months. The remaining two offenders (8%) did not receive an active term of incarceration to serve after sentencing.

Individuals convicted of racketeering activity as a result of the proposal may be sentenced similarly to those currently convicted under the Virginia RICO Act. Circuit Court CMS data for FY2017 and FY2018 indicate that 26 offenders were convicted of a RICO violation as their primary (most serious) offense at sentencing. The majority of these offenders (84.6%) were given a state-responsible (prison) term for which the median sentence was 3.0 years.

Impact of Proposed Legislation:

State adult correctional facilities. Because it creates a new felony offense and expands existing felony provisions, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal. As a result, the magnitude of the impact on prison beds cannot be quantified.

Local adult correctional facilities. Similarly, the proposal may also increase the local-responsible (jail) bed space needs of the Commonwealth. However, the magnitude of the impact cannot be determined.

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 quantified.

Virginia’s sentencing guidelines. As a new felony, convictions under § 18.2-348.1 would not be covered by the sentencing guidelines as the primary, or most serious, offense. The guidelines currently do not cover RICO violations when they are the most serious offense at sentencing. Such convictions, however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines is 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 2018, 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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