



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 492

(Patron – Mims)

Date Submitted: 2/2/04

LD #: 04-0188104

Topic: Gangs, terrorism and the presumption against bail

Proposed Change:

This proposal amends §§ 19.2-120 and 19.2-299 with respect to bail and presentence reports. Under the proposal for § 19.2-120, offenders charged with §§ 18.2-46.2 (gang participation), 18.2-46.3 (gang recruitment), 18.2-46.5 (act of terrorism) or 18.2-46.7 (bioterrorism) will be presumptively denied bail (this presumption is subject to rebuttal under § 19.2-120). Currently, presumptive denial of bail exists for violent crimes, certain drug sale crimes, certain weapons crimes, and persons charged with a felony who have two prior convictions for violent offenses. In addition, the court must consider membership in a criminal street gang as defined in § 18.2-46.1 as one of the factors in determining whether bail will be granted. The proposed § 19.2-299 will require that a probation officer's investigation and report will include any information regarding the offender's participation in a criminal street gang as defined in § 18.2-46.1.

Data Analysis:

According to fiscal year (FY) 2001 and FY2002 Local Inmate Data System (LIDS) data, there were 41 persons charged with gang participation or recruitment who were held in jail either pre- or post-trial. For 13 of those cases, the conclusion is known: 4 offenders were convicted of the charge (3 were given a state-responsible (prison) sentence with a median sentence of six years, while 1 was not sentenced to any additional incarceration); the other 9 of the 13 offenders were not convicted of either gang participation or recruitment. None of these 13 offenders were released pretrial.

For 28 of the 41 charges, the conclusion of the case is not known. Of these, 19 had been released from jail following a median length of stay of 26 days after arrest. The remaining nine had not been released from jail by the end of FY2002.

Impact of Proposed Legislation:

The proposed legislation may affect state-responsible (prison) bed space needs because the number of persons for whom there is a presumptive denial of bail under § 19.2-120 would increase. For the additional gang and terrorism offenders for whom bail is denied, the length of time served in a Department of Corrections (DOC) prison bed will actually be reduced, since these offenders will receive credit for the time spent in a local jail awaiting trial. Based solely on those offenders for whom disposition information is known, the proposal would have no impact on state-responsible (prison) bed

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space needs. However, for 69% of the cases the disposition information is not known. If it is assumed that those subject to presumptive denial of bail under the proposal would have a similar length of time to disposition, similar conviction rate, and similar sentences, the net impact of the proposal would be a reduction of about one state-responsible (prison) bed by 2010 (a savings to the state of \$33,303).

The bed-space requirements for local-responsible (jail) inmates, however, are expected to increase based entirely on the expansion of presumptive denial of bail. Offenders affected by this aspect of the proposal will spend more time pretrial in the local jails. Similarly, if an impact is based on those with known dispositions, there would be no impact based on the proposal. Nonetheless, for most of the cases, there was no disposition information. Based on the same methodology used above, there will be an increased need for about two jail beds statewide, for a cost to the state of \$17,141 (using FY2002 jail inmate costs) for reimbursement to localities. There would be an additional cost for the localities of \$11,664 for the same beds.

Any impact on community corrections is likely to be negligible. Under the proposal, there may be a brief shift in numbers as offenders are released from their prison and jail sentences closer to their sentencing date, but the effect should be graduated.

No adjustment to the sentencing guidelines would be necessary under the proposal.

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

FY05	FY06	FY07	FY08	FY09	FY10
-1	-1	-1	-1	-1	-1

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

FY05	FY06	FY07	FY08	FY09	FY10
1	1	1	2	2	2

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary's Committee on Inmate Forecasting in 2003.
2. New cases representing state-responsible sentences were based on forecasts developed by the Virginia Criminal Sentencing Commission using the LIDS database.
3. Cost per prison bed was assumed to be \$22,606 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 FY2002 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$29.81 per day or \$10,889 per year. The local cost was calculated by using the daily expenditure cost of \$54.12 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 \$20.29 per day or \$7,410 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.***

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Assumptions relating to bail

1. The impact of the proposed legislation on bail provisions is treated as being fully implemented when the legislation becomes effective on July 1, 2004.
2. The bed-space impact was derived by estimating the difference between expected dates of release from both jail and prison under current law and under the proposed legislation. Release dates were adjusted to reflect differences in pretrial time served under the two scenarios given identical effective sentences (imposed minus suspended time).

Assumptions relating to sentence lengths

1. The impact of the proposed legislation on criminal provisions, which would be effective on July 1, 2004, is phased in to account for case processing time.
2. The bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates for felony convictions were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2002; for violent offenses, this rate was 9.04%.
3. For cases where disposition information was unknown, sentence length (for convictions only) and length of time to disposition (for all cases) information were randomly drawn from among the cases where the disposition was known.

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