

Department of Planning and Budget 2006 Fiscal Impact Statement

1. Bill Number: HB1038

House of Origin: ☐ Introduced ☐ Substitute ☐ Engrossed
Second House: ☐ In Committee ☐ Substitute ☒ Enrolled

2. Patron: Griffith

3. Committee: Passed Both Houses

4. Title: Sexually violent predators; adds to list of offenses that qualify as sexual offenses

5. Summary/Purpose: This bill adds to the list of offenses that qualify as sexually violent offenses; it provides a mechanism for the sexually violent predator (SVP) civil commitment of incompetent defendants; and, it stipulates the use of the Static-99 risk assessment instrument as the screening threshold to identify prisoners who will be forwarded to the Commitment Review Committee (CRC) for assessment. In addition, this affords the CRC and the Office of the Attorney General (OAG) access to Children's Protective Services records.

6. Fiscal Impact Estimates are: Tentative

7. Budget amendment necessary: Yes

Fiscal implications:

Department of Mental Health, Mental Retardation and Substance Abuse Services

The primary impact of the legislation will be the increased operating and capital costs resulting from a substantial increase in the number of offenders involuntarily committed as sexually violent predators (SVP). The agency currently houses these offenders in a 48-bed facility in Dinwiddie County on the campus of the Southside Virginia Training Center for the Mentally Retarded. The 2005 General Assembly authorized the issuance of up to \$33 million in Virginia Public Building Authority (VPBA) bonds to construct a new 100-bed SVP facility on the property of the Piedmont Geriatric Hospital in Nottoway County. This facility is expected to open in October 2007.

Under the provisions of the introduced legislation, the Crime Commission projected that 132 offenders would be committed in the 2006-2008 biennium. Combined with the 22 already committed under the existing law, the Commission projected there would be 154 offenders involuntarily committed to the SVP facility by June 2008. Rather than a specific number, DMHMRSAS preferred to project a range for the number of SVPs that would be committed to the facility. However, its estimated range—a low of 133 and a high of 197—encompassed the Crime Commission projection.

Changes made during the conference process, and included in the enrolled bill, will have a minimal effect on the number of individuals originally estimated to be committed to the facility under the provisions of the introduced HB1038. The introduced legislation would have required a review of individuals with a score of 4 or higher on the Static-99 assessment tool. The enrolled bill increases the score to 5, but also requires the review of any individual scoring a 4 having committed specific predicate crimes as detailed in the bill. The number of individuals scoring a 4 on the Static-99 test is only 19% of the pool of possible commitments, the remainder scoring a 5 or higher. Based on incomplete data, it is estimated that between 60 percent and 75 percent of individuals scoring a 4 will still be included in the pool. This will result in only a minor reduction (3 percent to 5 percent) of the monthly predicted commitment levels.

<u>FY08 Year End Census</u>			
	Original FIS	4 Score - 25% Reduction	4 Score - 40% Reduction
Low	133	129	126
High	197	191	188

Because the SVP laws have been in effect for only a few years and there has been little experience with how judges will implement them, it is difficult to project how the statutes would be implemented in the future. This is particularly applicable to the enrolled bill, as the substantial, necessary information to better project commitments based on the new provisions has not been compiled. What is clear is that, using the best information available, the number of SVPs committed to secure inpatient treatment will exceed the 100-bed capacity of the new facility by the end of the next biennium.

The minimal reduction in projected commitments resulting from changes in the enrolled legislation will not allow the Department to make any significant changes to staffing patterns. Consequently, the Department does not anticipate lower operating costs than were projected in the original fiscal impact statement.

The current facility was constructed to house the majority of offenders in single-occupancy rooms for the safety of staff and other facility residents. The provisions of the enrolled bill would force the Department to double-bunk offenders at the existing Dinwiddie facility in addition to operating an 18-person dormitory style room to accommodate the increase in occupancy. This will require additional program and security staff, as well as additional funding to create new physical space and purchase equipment. The Department estimates that it will require \$2 million annualized in addition to existing funding to maintain services for the expanded population at the Dinwiddie facility.

Under the enrolled legislation, DMHMRSAS expects the new facility could be over capacity when it opens in October 2007. Even with the beds at Dinwiddie, DMHMRSAS would have only 148 SVP beds available, or 190 beds if double-bunked, meaning it would likely be still be operating at full capacity by the end of the biennium. This adds greatly to the cost of the SVP program, as the cost of operating the 100-bed facility is approximately \$11.8 million at full capacity, \$14 million if a 50-bed wing is added, \$16.8 million at 200 beds, and an additional \$2 million for each additional set of 50 beds. The construction cost for each 50-bed unit is \$7.3 million, or \$14.2 million for a 100-bed wing. The cost of operating the Nottoway facility would

be in addition to the cost of maintaining operations at the Dinwiddie facility at \$7 million to \$8 million per year.

The Department estimates that the FY 2008 costs, assuming that the Dinwiddie facility remains operational and the new facility opens in the fall of 2007, would be a minimum of \$10.9 million in addition to the base of \$6.1 million included in the Governor's proposed budget, not including any additional capital costs.

As both the Crime Commission and DMHMRSAS estimate that there will be approximately 130 or more committed SVPs by the end of FY 2008, and DMHMRSAS projects that there could be more than 300 committed by the end of FY 2009 and certainly between 250 and 300 committed by the end of FY2010, it would be cheaper in the long run to build a 300-bed facility now, if the proposed legislation is enacted. The \$28 million impact for the construction of 200 additional beds (shown in the table below) could be provided as a cash appropriation in the current fiscal year or FY 2007, whenever the construction agreement was modified, or its fiscal impact could be spread out by increasing the current VPBA bond authorization for the facility by that amount. Debt service on \$28 million would be approximately \$2.23 million per year for 20 years.

It is anticipated that DMHMRSAS will experience increased costs in addition to the higher operating costs of the facility. The increase in the number of offenders being evaluated for SVP commitment as a result of the proposed legislation will result in additional costs for independent evaluations and evaluator testimony—approximately \$500,000 each year of the biennium, according to the Crime Commission.

With this bill, the number of those persons referred for conditional release would increase from the current total of 4 for the past 30 months to 20 per year. DMHMRSAS would contract with the Department of Corrections (DOC) for monitoring and supervision of those on conditional release. Per person contract cost is estimated at \$9,200, which includes supervision, treatment. FY 2007 contract costs are estimated at \$101,200; FY 2008 costs are \$285,200. These projections do not include females and incompetent defendants eligible for conditional release as stipulated by this bill so these figures could be understated. The projected cost of the use of a Global Positioning System (GPS) for each person on conditional release is included in the Department of Corrections section of this document.

Attorney General

Under the statutory process established for involuntary commitment of sexually violent predators, once it has been determined that an offender meets the minimum criteria to be considered for commitment, his case is referred to the Office of the Attorney General (OAG). That office is responsible for reviewing the case and determining whether to petition the court to civilly commit the offender. If the petition is filed, the OAG represents the Commonwealth in court. Since the SVP provisions went into effect in 2003, the OAG has reviewed 75 cases. The Crime Commission projects that the changes in the proposed legislation will result in 289 cases being referred to the OAG in FY 2007 and FY 2008 for review. To handle this increased caseload, the OAG states it will need five additional positions—four attorneys and one paralegal.

Department of Corrections

To implement the recommendations of the Crime Commission and the requirements of the legislation, the Department of Corrections (DOC) would need to place several hundred additional sex offenders on probation each year under intensive supervision and subject them to GPS monitoring and tracking. This additional pool of sex offenders would come from two separate sources.

The largest group for which DOC would have additional responsibility would be those sex offenders being released from prison who committed one of the qualifying SVP offenses, but who did not score high enough on the Static-99 assessment instrument to qualify for evaluation for involuntary commitment. It would also include those offenders who did score high enough on the Static-99, but who, for whatever reason, were not committed as a SVP. The Crime Commission estimates that there will be 460 such offenders released each year of the biennium. Although the proposed legislation does not explicitly require that DOC place these sex offenders under intensive supervision, with GPS tracking, the Crime Commission strongly recommends that it be done and there is the explicit expectation that DOC will do so. Accordingly, the costs for implementing this recommendation are included in this fiscal impact statement.

The other group DOC will be responsible for supervising will be those offenders committed as SVPs, but placed in the community on conditional release. For such offenders, the legislation would require that they be subject to GPS monitoring while on conditional release. Again, the legislation does not explicitly require that DOC supervise these offenders. But, separate legislation would authorize DMHMRSAS to contract with DOC to monitor them and it is the Crime Commission's expectation that DOC will assume this responsibility. The Crime Commission estimates that 38 SVP's will be placed on conditional release in the next biennium. This group is included in this estimate of the fiscal impact on DOC.

Of the additional sex offenders for whom DOC will be expected to provide intensive supervision and GPS monitoring in the next biennium, the agency estimates that one-third will be supervised by the existing sex containment model programs in its probation and parole district offices. To supervise the remaining two-thirds, the agency estimates it will need an additional 18 probation officers in the first year and 36 in the second. Under the existing contract that DOC has with a private vendor, GPS monitoring costs \$10 per day per offender. Sufficient funds would be needed to place all SVP offenders under GPS monitoring.

In addition to personnel and GPS, there would be other costs associated with this group. Under current DOC policies, each offender assigned to a sex containment model program is assessed and subject to random polygraph examinations (at least four per year). DOC also provides funds for temporary food and lodging for those offenders who have no place to stay when they are released from prison.

The final cost to DOC of implementing the probation supervision components of the proposed legislation would be the establishment of an administrative hub for GPS monitoring in the agency's central office. The GPS devices will send an alert whenever the offender wearing them enters a "hot" zone that he is prohibited from entering, i.e. within 100 feet of a school. It will also send an alert if the signal is interrupted, which will happen if the offender removes, or somehow disables, the device. Because the offender's presence in a "hot" zone could result from his passing a school in a car or bus and the signal could be interrupted by his going through a

tunnel or underpass or going into a building, probation officers could receive a large number of “false” GPS alerts, which would divert them unnecessarily from supervision of other offenders. Therefore, DOC feels that the existence of a hub, or call center, which could screen GPS alerts, would greatly enhance the effectiveness of the system. The agency would need five additional positions to staff the hub 24 hours a day, seven days a week.

In addition to having to supervise more intensely those SVPs released from prison, the provisions of the legislation increasing the number of offenders eligible to be committed as SVPs would also have an impact on DOC. DOC is responsible for assessing each offender who committed an eligible offense, prior to his release from prison. In order to handle the increased number of assessments that will result from the proposed legislation and to ensure accuracy and consistency in the application of the more complex Static-99 assessment instrument, DOC needs two full-time psychologists assigned to this task.

The total additional costs for DOC resulting from the proposed legislation are estimated at \$2.5 million and 25 positions in FY 2007 and \$8.5 million and 43 positions in the FY 2008.

There would be an additional capital cost in the next biennium for DOC resulting from this legislation, as well. DMHMRSAS relies on the wastewater treatment plant (WWTP) at the Nottoway Correctional Center, operated by DOC, to treat wastewater from Piedmont Geriatric Hospital. That plant needs an upgrade related to its inability to adequately remove some metals from its discharge. To handle the added flow resulting from the new SVP facility to be built on the Piedmont property, the plant would need additional capacity. The estimated cost of the upgrade and expansion is \$4.1 million.

The introduced budget includes \$350,000 in the next biennium for the planning costs for the needed upgrade and expansion. The expectation was that additional funding for construction would be provided in future sessions for FY 2008 or FY 2009, depending on how quickly DOC could complete the design of the facility and obtain the required permits. Based on tentative population projections by DMHMRSAS in the fall of 2005, the existing WWTP would have had sufficient reserve capacity to handle the flow from the new SVP facility until the upgrade and expansion were completed.

The additional population projected for the SVP facility in the next biennium due to the proposed legislation makes it necessary to complete the WWTP upgrade and expansion quicker than originally planned. The increased population will not require any greater WWTP treatment capacity than had been planned for the expansion, but it will require that additional capacity be available sooner. To ensure that the WWTP upgrade and expansion can be completed as soon as possible and that DOC will have the WWTP capacity to treat the increased wastewater flow from the SVP, the additional construction funds, \$3,750,000, need to be made available to DOC in FY 2007.

Criminal Fund

Whenever the Attorney General files a petition with a court to have an offender involuntarily committed as a SVP, the offender is entitled to an independent psychiatric examination and to having expert testimony at his trial. The costs for these evaluations and expert testimony are borne by the Criminal Fund. According to Crime Commission estimates, the proposed

legislation will result in approximately \$450,000 more being paid out from the Criminal Fund each year.

<u>Operating Expenses</u>		FY 2007	FY 2008
Attorney General		\$ 375,076	\$ 375,076
DMHMRSAS		\$ 1,748,903	\$ 11,798,691
Corrections		\$ 2,545,645	\$ 8,473,743
Criminal Fund		\$ 442,750	\$ 448,500
Total Operating		\$ 5,112,374	\$ 21,096,010
<u>Capital Expenses</u>			
DMHMRSAS		\$ 28,000,000	
Corrections			\$ 3,750,000
Total Capital		\$ 28,000,000	\$ 3,750,000

9. Specific agency or political subdivisions affected: Department of Mental Health, Mental Retardation and Substance Abuse Services, Department of Corrections, Attorney General

10. Technical amendment necessary: An enactment clause should be added to the bill such as: That this act, for which general fund dollars are required, shall not take effect unless a specific appropriation has been included to support the provisions of this act within a general appropriation act taking effect July 1, 2006, that has been approved by the General Assembly and signed by the Governor.

11. Other comments: A delay of the statutory changes may allow DMHMRSAS to continue to house individuals in single bunks at the Dinwiddie facility prior to the opening of the new facility, therefore protecting staff and residents from possible dangers of overcrowding. It would be useful to include reporting language to review the assumptions in the enrolled bill and provide a better estimate of projected commitments and associated costs as well as the specific census and actual costs of the revamped program. This bill is companion legislation to SB317, which was incorporated into SB559.

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cc: Secretary of Health and Human Resources
Secretary of Public Safety
Office of the Attorney General