



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1333

Amendment in the Nature of a Substitute (Patron Prior to Substitute – Bell)

LD#: 06-5221232

Date: 2/10/2006

Topic: Sex Offender Registry violations

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$630,940 (26 beds)
- **Local Adult Correctional Facilities:**
-\$34,928 (-4 beds)
- **Adult Community Corrections Programs:**
None (\$0)

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

Summary of Proposed Legislation:

The proposal amends §§ 9.1-902 and 18.2-472.1 to add additional offenses requiring registration to the Sex Offender and Crimes Against Minors Registry (SOR) and to increase the penalty for subsequent violations for failing to register or providing false information. The proposal would add burglary under § 18.2-91 with intent to commit certain felony sex crimes, first-time possession of child pornography under subsection A of § 18.2-374.1:1, and certain criminal homicides (§§ 18.2-31 or 18.2-32 when the victim is less than 15, §§ 18.2-31 or 18.2-32 when the victim is 15 to less than 18 and accompanied by a Registry offense, or any criminal homicide committed in conjunction with §§ 18.2-371 (contributing to the delinquency of a minor) or 18.2-371.1 (child abuse or neglect) as offenses that require SOR registration. The proposal also adds any first offense under § 18.2-374.1 (production, sale, distribution, or possess with intent to distribute sexually explicit material involving children as a “sexually violent offense” SVO; currently, a first offense is considered SVO only if there was a prior conviction (where the offender has been at liberty between convictions) for any of the other offenses list in the second subsection 2 of section A.

Currently, persons required to register, other than those convicted of sexually violent offenses, who knowingly fail to register or reregister, or provide materially false information to the SOR are guilty of a Class 1 misdemeanor. Under the proposal, a first conviction remains a Class 1 misdemeanor, but a second or subsequent conviction would be punishable as a Class 6 felony.

Those who have been convicted of sexually violent offenses who knowingly fail to register or reregister, or provide materially false information to the SOR are currently guilty of a Class 6 felony. Under the proposal, a first conviction remains a Class 6 felony; however, the penalty for a second or subsequent conviction would be increased to a Class 5 felony.

Analysis:

As of August 24, 2005, the Sex Offender and Crimes Against Minors Registry (SOR) contains the names of 11,950 offenders living in Virginia. Most (82%) are registered as sexually violent offenders (defined in § 9.1-902), for whom failing to comply with Registry requirements is a Class 6 felony. For the remainder (18%), failing to comply with the Registry as required is a Class 1 misdemeanor.

Based on the fiscal year (FY) 2003 and FY2004 Local Inmate Data System (LIDS), 94 offenders held pre- or post-trial in jail were convicted of a Class 1 misdemeanor for failing to register, while 168 were convicted of a Class 6 felony for failing to register for a sexually violent offender. Of those convicted of the misdemeanor offense, 89% received local-responsible (jail) terms, with a median sentence of approximately two months. Another 2% of offenders, convicted of additional charges, received state-responsible (prison) terms, with a median sentence of nearly 14 years. Of those convicted of the felony offense, 69% received local-responsible (jail) terms, with a median sentence of 6 months, and nearly 21% were sentenced to a state-responsible (prison) term, with a median sentence of 1.7 years.

Although the ability to look for prior convictions for SOR violations is limited (LIDS started using statute-specific crime codes in January 2000), 10% of the misdemeanor and 31% of the felony SOR violations were for offenders identified as having prior convictions.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of the SOR to include additional offenders and by increasing the penalty for subsequent violations, the proposal will increase the need for state-responsible (prison) beds. The estimated impact is an additional 26 prison beds statewide by FY2012.

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

FY07	FY08	FY09	FY10	FY11	FY12
4	11	15	19	23	26

Local adult correctional facilities. The proposal is expected to increase local-responsible (jail) bed space needs. The estimated impact is four fewer jail beds statewide for a savings to the state of \$34,928 and to localities of \$32,198.

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

FY07	FY08	FY09	FY10	FY11	FY12
-1	-2	-2	-3	-3	-4

Adult community corrections programs. The proposal may affect adult community corrections programs, but the impact is a result of a delayed need as offenders serve longer sentences, rather than an increased number of offenders needing the services.

Virginia's sentencing guidelines. Convictions under § 18.2-472.1 are not covered by Virginia's sentencing guidelines but may augment the recommendation if the most serious offense at conviction is a covered offense. No adjustment to the sentencing guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ) the proposal will not have an impact on juvenile correctional centers (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal will not have an impact on juvenile detention facilities bed space needs.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$630,940 for periods of imprisonment in state adult correctional facilities and is \$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's Committee on Inmate Forecasting in 2005.
2. New cases representing state-responsible sentences were based on the admissions forecast as approved by the Secretary's Committee on Inmate Forecasting in July 2005.
3. Cost per prison bed was assumed to be \$23,966 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 FY2004 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$26.03 per day or \$9,506 per year. The local cost was calculated by using the daily expenditure cost of \$54.37 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 \$23.99 per day or \$8,763 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.***
5. The estimated number of offenders that would be sentenced under the proposed § 9.1-902 was adjusted to reflect the change in the number of offenders with the requisite SOR crimes. The anticipated number of offenders was derived from the proportion of new and current SOR crimes.

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2006, is phased in to account for case processing time.
2. 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 Department of Corrections' facilities were earning sentence credits as of December 31, 2004. For sex offenses, this rate was 11.05%.
3. To gauge the impact for proposed increases to penalty structures, stand-in sentences were randomly drawn from the sentences of persons convicted for an appropriate substitute crime:
 - a. Offenders sentenced under the Class 6 felony provisions of § 18.2-472.1 provided stand-in sentences for misdemeanants that would become eligible for the new Class 6 felony under the proposed § 18.2-472.1.
 - b. Offenders sentenced under the sexual assault statutes with a Class 5 felony provided stand-in sentences for the Class 5 felons that would become eligible for the Class 5 felony under the proposed § 18.2-472.1.

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