



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 745

(Patron – Purkey)

LD#: 06-3691472

Date: 1/9/2006

Topic: Post-release supervision of felony drug offenders

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$90,886,046 (3,792 beds)
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Programs:**
Cannot be determined

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

Summary of Proposed Legislation:

The proposal amends § 18.2-10 of the *Code of Virginia* to require courts to impose post-release supervision conditions in certain felony drug cases. The proposal states that for any felony drug offense under Article 1 (§ 18.2-247, et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) committed on or after July 1, 2006, the court shall impose an additional term of confinement of not less than 18 months, which shall be suspended conditioned upon successful completion of a period of post-release supervision (§ 19.2-295.2). Post-release supervision shall include drug testing on a regular basis and compliance with such other terms as the sentencing court may require. The additional term may only be imposed when the sentence includes an active term of incarceration in a correctional facility.

According to § 19.2-295.2, the period of time an offender is under post-release supervision conditions must be between six months and three years. During this time if the offender fails to abide by the conditions established, the suspended post-release term may be revoked by the Virginia Parole Board.

Analysis:

According to fiscal year (FY) 2001 through FY2005 Sentencing Guidelines data, nearly two-thirds (63%) of the 38,517 felony drug offenders sentenced during the time period received an active period of incarceration; 37% received a local-responsible (jail) term with a median sentence of 4 months; and, 26% received a state-responsible (prison) term with a median sentence of 2 years. The overwhelming majority (96%) of these offenders had a suspended sentence obligation after release from confinement; the median suspended sentence was 57 months (or 4.75 years). In addition, 80% of the offenders who received active incarceration were placed on supervised probation for an average (median) of 36 months after their release from confinement.

Based on FY1998 through FY2004 Sentencing Revocation Report (SRR) Data, there were 17,323 felony drug offenders found in violation of their conditions of supervised probation, suspended sentence, good behavior, post-release supervision, or community-based program. Of the 8,907 violators who served an active period of incarceration for the original felony drug charge, 23% were sentenced to no active

incarceration period for the violation; 38% were sentenced to a local-responsible (jail) term with a median sentence of 6 months; and, 39% were sentenced to a state-responsible (prison) term with a median sentence of 2 years. Therefore, the majority of felony drug offenders (77%) who have served an active period of incarceration for their original offense are sentenced to some form of incarceration when they violate their post-incarceration conditions.

Impact of Proposed Legislation:

State adult correctional facilities. By requiring a period of post-release supervision in felony drug cases sentenced to active incarceration, and imposing an additional post-release term of at least 18 months which could be revoked by the Virginia Parole Board, the proposal will have an impact on state-responsible (prison) bed space needs. The estimated number of beds based on a minimum postrelease term of 18 months is 3,792 prison beds. Currently, most felony drug offenders have suspended sentence and/or supervision obligations to the court after release from confinement. Therefore, any post-release supervision restrictions or suspended sentences would be in addition to the obligations that these offenders already have.

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

FY07	FY08	FY09	FY10	FY11	FY12
177	1437	2783	3420	3694	3792

Local adult correctional facilities. The offenders affected by the proposal are unlikely to be placed in local-responsible (jail) beds by the Parole Board. There is no anticipated impact on jail bed space needs.

Adult community corrections programs. The impact on adult community corrections programs cannot be determined.

Virginia's sentencing guidelines. Violations of post-release supervision are not currently covered by Virginia's probation violation guidelines. Therefore, no adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According the Department of Juvenile Justice (DJJ), the proposal is not expected to increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to increase juvenile detention facilities bed space needs.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$90,886,046 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 2004.
2. New cases representing state-responsible sentences were based on forecasts developed for the Secretary's Committee on Inmate Forecasting and approved 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. The estimated number of offenders that would be sentenced for a postrelease revocation for a drug conviction was determined by assuming that the rate of recidivism would be the same as for drug offenders violating probation in FY1997 through FY2001; this rate was 54.8%

Assumptions relating to sentence lengths

1. The impact of the proposed legislation on criminal provisions, which would be effective on July 1, 2006, 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 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 drug offenses the rate was 10.97%. Release dates for local-responsible felony convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by felons sentenced in FY2003 to local jails; this rate was 89.7%.
3. To gauge the impact of mandatory postrelease supervision for drug offenses, it was assumed that a revocation would occur at the same rate as drug offenders violating probation in FY1997 through FY2001, and the timing of revocation would be adjusted to include satisfying the sentence for the drug offense. According to recent conversations with the Chair of the Virginia Parole Board and staff from the Department of Corrections' Court and Legal Unit, although the Parole Board has the discretion to revoke part or all of a defendant's post-release term, they will almost always revoke the entire post-release term. It was assumed that the portrelease term that would be imposed upon revocation would be 1.5 years; the minimum required by the proposal.

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