



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 991

(Patron – Shannon)

LD #: 06-1682502

Date: 12/27/2005

Topic: Probation/parole revocation of sex offenders who fail to register/reregister

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined, but may be large
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

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

Summary of Proposed Legislation:

The proposal amends § 18.2-472.1 relating to revocation of probation or parole of registered sex offenders who fail to register or reregister with the Sex Offender and Crimes Against Minors Registry.

Currently, § 18.2-472.1 states that persons required to register, other than those convicted of sexually violent offenses, who knowingly fail to register or reregister are guilty of a Class 1 misdemeanor. Those who have been convicted of sexually violent offenses who knowingly fail to register or reregister are guilty of a Class 6 felony.

Under the proposal, § 18.2-472.1 would be amended to require the court to revoke the probation or parole of any person convicted of failing to register or reregister with the Sex Offender and Crimes Against Minors Registry.

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 six months, and nearly 21% were sentenced to a state-responsible (prison) term, with a median sentence of 1.7 years.

According to FY2002 through FY2003 Pre-Sentence Investigation (PSI) data, there were 1,378 sexual assault offenders sentenced during the time period who are deemed to be sexually violent offenders as defined by § 9.1-902. Nearly two-thirds (63%) were sentenced for sexually violent offenses for which the statutory maximum penalty is less than life imprisonment (i.e., aggravated sexual battery, obscenity, etc.). In these cases, judges suspended an average (median) of six years of the imposed sentence. Over one-third (37%) of the sexually violent offenders sentenced during the time period were sentenced for crimes with a statutory maximum penalty of life imprisonment (i.e., rape, forcible sodomy, kidnapping with intent to defile, etc.). In these cases, judges suspended an average (median) of 15 years of the imposed sentence. Therefore, sexually violent offenders, who are subject to a Class 6 felony for failing to register or reregister as a sex offender, typically have several to many years of suspended incarceration time that may be re-imposed in a revocation hearing.

Based on Department of Corrections' (DOC) Operational Data Store (ODS) data as of December 26, 2005, there are 394 offenders with parole obligations for a sexually violent crime defined by § 9.1-902 as their primary (or most serious) offense. The median amount of parole revocable time remaining for these offenders is 3.1 years. Furthermore, 91% of the offenders were already released on mandatory parole and would not be eligible for mandatory parole for the current offense in the future. These offenders may, however, apply for discretionary parole, but if denied, they must serve their remaining time up until good-time requirements have been met. In addition to parole obligations for sexually violent offenses, many of these offenders (44%) also have obligations for other offenses, either under parole or truth-in-sentencing. Therefore, sexually violent offenders who have parole obligations tend to have several years of revocable time that may be re-imposed by the Parole Board in a revocation hearing.

Impact of Proposed Legislation:

Adult state correctional facilities. The proposal may increase the state-responsible (prison) bed space needs. However, existing databases do not provide sufficient information to estimate the number of revocations that would be likely to occur under the proposal and whether those revocations would lead to additional time to be served by the probationer/parolee. Current law in probation revocation cases allows a judge to re-impose all, a portion, or none of the suspended incarceration time. Furthermore, while all time may be revoked in a Parole revocation, this does not mean that the offender will serve all of that time; parole violators will be considered again within one year of the revocation. Therefore, it is not possible to estimate the correctional bed space impact of this proposed legislative change. However, given the fact that the proposal would target a large number of offenders carrying significant periods of suspended or parole revocable incarceration time, the correctional bed space impact could be rather large.

Adult local correctional facilities. The proposal may have an impact on the local-responsible (jail) bed space needs, but it cannot be determined.

Adult community corrections programs. The proposed legislation may increase the adult community corrections programs needs, but the impact cannot be determined.

Virginia's sentencing guidelines. Probation revocations that are based on a new law violation are not covered by Virginia's probation revocation guidelines. If the probation revocation, required by the proposal, is sentenced along with an offense covered by Virginia's sentencing guidelines as the primary (most serious) offense at conviction, it may augment the guidelines recommendation. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. The Department of Juvenile Justice (DJJ) reports that the proposed legislation is not expected to have an impact on juvenile correction centers (JCC).

Juvenile detention facilities. According to the Department of Juvenile Justice, the proposed legislation is not expected to have an impact on juvenile detention facilities.

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 and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

sor06_1682