



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 350

(Patron – Howell)

LD#: 06-9818744

Date: 1/13/2006

Topic: Additional offenses requiring registration as a sex offender

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$9,016 (.38 bed)
- **Local Adult Correctional Facilities:**
\$732 (.08 bed)
- **Adult Community Corrections Programs:**
Cannot be determined

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

Summary of Proposed Legislation:

The proposal amends § 9.1-902 to include as an offense requiring registration with the Sex Offender and Crimes Against Minors Registry (SOR) as a “sexually violent” offender (SVO), violations or attempted violations of § 18.2-374.3. Currently, § 9.1-902 requires offenders to register who have been convicted of § 18.2-374.3(B)(iv), using a communications system for soliciting a child under the age of 15 for indecent liberties (§ 18.2-370(A)). Currently, failure to register when the underlying conviction is § 18.2-374.3(B)(iv) is a Class 1 misdemeanor, under the proposal, a similar failure, albeit expanded to include all of § 18.2-374.3, would become a Class 6 felony.

Under the proposal, offenses requiring registration would be expanded to include using communications systems for the purpose of procuring or promoting the use of a minor in violation of other crimes listed under § 18.2-370 (indecent liberties) as well as § 18.2-374.1 (obscenity crimes involving minors). Furthermore, the proposal adds to the list of offenses requiring registration the use of a communications system for the purpose of soliciting a minor in violation of § 18.2-355 (prostitution), § 18.2-361 (non-forcible sodomy and sodomy involving family members), § 18.2-374.1 (producing, participating, selling, etc., sexually explicit material involving minors), or § 18.2-374.1:1 (possessing obscene material involving minors). Therefore, the proposal would make it a Class 6 felony for failing to register with the SOR if the underlying conviction is any crime listed under § 18.2-374.3.

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.

According to FY2002 and FY2003 Pre-Sentence Investigation (PSI) data, there were only 11 convictions under § 18.2-374.3 as the primary (or most serious) offense at sentencing. Because of data limitations, it is not possible to ascertain the number of the 11 cases that pertain to § 18.2-374.3(B) clause (iv) which is already covered as a registration offense; however, all offenses under the proposed § 18.2-374.3 will become SOR registrants as “sexually violent” offenders.

Impact of Proposed Legislation:

State adult correctional facilities. By increasing the number of “sexually violent” offenses requiring registration with SOR, the state-responsible (prison) bed space needs will increase. The estimated impact is an increased need of a partial bed (.38 bed) by 2012.

Local adult correctional facilities. The proposal will affect the number of offenders who may be sentenced with a local-responsible (jail) sentence; the estimated impact is an increase of a partial bed (.08 bed) statewide, for an additional cost of \$732 to the state and \$675 to localities.

Adult community corrections programs. The proposal may affect adult community corrections programs, but the impact cannot be quantified.

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 \$9,016 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 forecasts approved by the Secretary’s Committee on Inmate Forecasting in July 2005. New cases representing local-responsible sentences were based on forecasts developed by the Virginia Criminal Sentencing Commission using the Local Inmate Data System (LIDS) database.
3. The estimated number of offenders that would be sentenced under § 18.2-472.1 was adjusted to reflect the change in the number of offenders with the requisite Registry crimes. Based on FY2002 and FY2003 PSI data, there were 1,424 offenders sentenced for a crime that is currently among the Registry crimes for sexually violent offenses, and according to FY2003 and FY2004 LIDS data there were 11 sentenced for crimes under § 18.2-374.3 that are proposed to become SVO. The anticipated number of offenders was derived from the proportion of new and current predicate crimes.

4. 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.***
5. 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.***

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 11.54%. 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%.

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