

REVISED

Department of Planning and Budget 2006 Fiscal Impact Statement

1. Bill Number SB 559

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

2. Patron Stolle

3. Committee Finance

4. Title Sex offenders

5. Summary/Purpose:

The proposed legislation contains numerous changes in the laws regarding sex offenders. It would increase penalties for certain offenses, broaden the requirements for registration of sex offenders, enhance the accuracy of the sex offender registry, increase probationary supervision of sex offenders, and expand the number of offenders eligible for commitment as sexually violent predators. The following sections set out the requirements in each area.

Increased Penalties

The legislation provides for a minimum mandatory sentence of 25 years for persons convicted of rape, forcible sodomy, or object sexual penetration of a child under age 13, if the offender were more than three years older than the victim and the offense were committed during the commission of, or subsequent to, certain other sex-related offenses. Currently, the penalties for these offenses range from five years to life in prison.

Currently, the Code of Virginia sets out certain sex offenses as “offenses prohibiting proximity to children.” Anyone convicted of such an offense is prohibited from loitering within 100 feet of a school. Violation of the prohibition is a Class 6 felony. The proposed legislation would add to the list the violation of the requirements to register as a sex offender, if the offense requiring registration were one of the other offenses on the list of offenses prohibiting proximity to children. Furthermore, the bill would prohibit persons convicted of an offense prohibiting proximity to children from loitering within 100 feet of a child day program, from residing within 500 feet of a school, and working on the property of a school or child day center.

Sex Offender Registry

The Department of State Police is required to maintain a Sex Offender and Crimes Against Minors Registry, more commonly known as the Sex Offender Registry (SOR). A person convicted of any of the qualifying offenses listed in the Code must register with the State Police and be included in the SOR. Information in the SOR includes, among other items, the offender's name, description, photograph, offense for which convicted, and address. The Code requires the State Police to allow the general public to have Internet access to much of the information in the SOR. In addition, schools and other facilities that serve children may request automatic notification of registrations. Currently, the SOR lists more than 12,000 registrants.

The proposed legislation would increase the criminal penalties for SOR violations. Under current law, for anyone convicted of a sexually violent offense or murder, any failure to register for the SOR, or providing false registration information, is a Class 6 felony. The proposed bill would make a second or subsequent violation by anyone convicted of a sexually violent offense or murder a Class 5 felony. For all other sex offenders, violation of the SOR requirements is now a Class 1 misdemeanor. Under the proposed legislation, a second or subsequent violation would be a Class 6 felony.

Under current law, sex offenders required to register with the SOR must re-register annually. For persons convicted of SOR violations, the proposed bill would require them to re-register more often. Also, under current law, persons registered on the SOR must re-register following a change of residence. The proposed bill would add the requirement to re-register following any change of the place of employment.

Several provisions of the legislation are intended to enhance the accuracy and completeness of the information included in the SOR, as well as to enhance the enforcement of the statutory provisions regarding registration. The most important of these provisions would require the State Police to physically verify, or cause to be physically verified, the registration information of each SOR registrant. The verification would have to be completed within 30 days of any initial registration and semi-annually each year thereafter. Any change of address would also have to be physically verified within 30 days. The Department of Juvenile Justice, Department of Corrections, and local and regional jails would be required, upon receiving any offender for whom SOR registration is required, to obtain the required SOR information and forward it to the State Police. Two- and four-year institutions of higher education would have to submit to the State Police at the beginning of each school year a list of students enrolled, along with certain information about those students. The Department of Motor Vehicles would be required to submit to the State Police information from applications it had received for licenses and identification cards. The State Police would be required to compare these lists of names with addresses, etc. to its criminal databases and SOR to determine if the information in the SOR were up to date and accurate.

Probationary Supervision

For persons convicted of violations of SOR requirements, the proposed legislation would require a judge to impose, in addition to any time served in jail or prison, a period of active

post-release supervision by the Department of Corrections. Furthermore, during the period of supervision, the offender would be subject to GPS monitoring. The periods of post-release supervision would vary, depending on the seriousness of the original sex offense and the frequency of violations, as follows:

- A. Sexually violent offenses or murder:
 - First SOR violation—2 years of post-release supervision.
 - Second or subsequent SOR violation—5 years of post-release supervision.
- B. Other sex offenders:
 - First SOR violation—6 months of post-release supervision.
 - Second or subsequent SOR violation—2 years.

Sexually violent predators

Under current law, persons convicted of specified violent sex crimes and sentenced to prison are subject to being involuntarily committed as sexually violent predators after they have finished serving any criminal sentence imposed by a court. Prior to the release of any such offender, the Department of Corrections is required to assess the offender, using the Rapid Risk Assessment for Sexual Offender Recidivism (RRASOR) instrument. Any offender receiving an assessment score of four or more shall be subject to involuntary commitment as a sexually violent predator. The law establishes a process whereby an offender could be determined by a court to be a sexually violent predator and involuntarily committed. Persons involuntarily committed as sexually violent predators are housed in a secure facility operated by the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) and provided treatment indefinitely until the court determines that they no longer pose a public safety threat and can be released. In lieu of commitment, or continued commitment, to a secure treatment facility, a court, under certain conditions, may place a sexually violent predator on conditional release in the community.

The proposed legislation would expand the list of offenses used to determine eligibility for consideration as a sexually violent predator. It also would require a different assessment instrument, the Static-99, to be used instead of the RRASOR. Finally, it would require that any sexually violent predator placed on conditional release be subject to GPS monitoring.

- 6. Fiscal Impact:** Preliminary. See Item 8.
- 7. Budget amendment necessary:** Yes. Items 48, 324, 325, 385, 387, 387.10 (new) and 414.
- 8. Fiscal implications:**

The proposed legislation would affect several agencies, which would need additional funds and positions to implement the provisions of the bill. In addition, the bill would result in an increase in the prison population. Under the provisions of §30-19.1:4 of the Code of Virginia, the General Assembly is required to provide a one-time appropriation to cover the costs of housing additional prisoners resulting from the passage of a bill. The total costs are

broken out by agency or source in the table below. Following that table are brief descriptions of how those cost estimates were derived.

Operating Expenses

Agency	FY 2007 Funds (GF)	FY 2007 Positions	FY 2008 Funds (GF)	FY 2008 Positions
Attorney General	\$375,076	5.0	\$375,076	5.0
DMHMRSAS	\$2,709,708	4.0	\$17,238,074	105.0
State Police	\$9,207,434	79.0	\$5,708,798	79.0
Corrections	\$2,545,645	25.0	\$8,473,743	43.0
Criminal Fund	\$442,750	n/a	\$448,500	n/a
Prison bed space impact (§ 30-19.1:4)	\$2,419,496	n/a	n/a	n/a
Total	\$17,700,109	113.0	\$32,244,191	232.0

Capital Expenses

Agency	FY 2006	FY 2007
DMHMRSAS	\$28,000,000	
DOC		\$3,750,000

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.

DMHMRSAS

The primary impact on DMHMRSAS 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.

Because the SVP laws have been in effect for only a few years and, consequently, 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. Nevertheless, the Crime Commission projects that, under the provisions of the proposed legislation, 132 offenders would be committed in the 2006-2008 biennium. Combined with the 22 already committed under the existing law, there would be 154 offenders involuntarily committed to the SVP facility by June 2008. Rather than a specific number, DMHMRSAS prefers 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—encompasses the Crime Commission projection. What is clear is that, using the best information available, both agencies expect the number of SVPs committed to secure inpatient treatment to exceed the 100-bed capacity of the new facility by the end of the next biennium.

The current facility was constructed to house the majority of offenders in single-occupancy rooms for the safety of staff and other facility residents. If the new legislation is adopted, before the new facility opens, the Department will be forced to double-bunk all offenders 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 \$1.8 to \$2 million in fiscal year 2007.

Under the proposed legislation, DMHMRSAS expects the new facility to be over capacity when it opens in October 2007. In order to house the offenders, the Department may have no option but to keep the Dinwiddie facility open, rather than close it when the new Nottoway facility comes on line. However, that would give DMHMRSAS only 148 SVP beds, 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 \$8 million per year.

The total fiscal year 2008 costs, assuming that the Dinwiddie facility remains operational and the new facility opens in the fall of 2007, would be \$15 million to \$17 million in addition to the base of \$6.1 million included in the Governor's proposed budget. This does not include any capital costs.

Because it would be more efficient to operate one larger facility than two smaller ones, it makes fiscal sense to expand the Nottoway facility. As both the Crime Commission and DMHMRSAS estimate that there will be 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 shown in the table at the beginning of this section for the construction of 200 additional beds 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. The bill authorizes DMHMRSAS to 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 cost of treatment and monitoring for each person. FY07 contract costs are \$101,200; FY 08 costs are \$285,200. These projections do not include the \$3,600 per person cost of the GPS monitoring unit. These projections also do not include females and incompetent defendants eligible for conditional release as stipulated by this bill so these figures could be understated.

Although the proposed SB 559 does not specifically require it, the Crime Commission's recommendations include the establishment of a stand-alone Office of SVP Services within DMHMRSAS. The Crime Commission estimated that the cost of such an office would be about \$300,000 in the first year and about \$450,000 in the second year. (The establishment of the office is provided for in SB 319, part of the Crime Commission package.)

State Police

According to the Crime Commission, there are approximately 6,500 registered sex offenders living in communities in Virginia. The proposed legislation would increase the registration requirements for the sex offenders. For example, not only would they have to notify the State Police whenever they changed addresses as they do now, but also whenever they changed places of employment. In addition, the legislation would require the State Police to physically verify the registry information (address, etc.) for each SOR registrant at least semi-annually. To handle the additional registrations and the physical verifications of SOR information, the Department of State Police states it would need 79 additional positions (71 of which would be troopers), at a cost of \$9.2 million in FY 2007 and \$5.7 million in FY 2008. An upgrade of the SOR database would also be needed, at a cost of about \$900,000. However, funding for this computer upgrade is included in the introduced budget.

The State Police may be able to reduce this cost by not using full-time active duty troopers to conduct all the physical verifications. For example, it may be possible to use retired troopers, working part-time to do some of the verifications or staff other than troopers.

Also, the State Police may be able to rely on DOC to verify the SOR information of those offenders on active probation or parole supervision. However, the costs shown in this analysis assume that full-time State Police troopers would be used for all verifications.

Corrections

To implement the recommendations of the Crime Commission and the requirements of the proposed 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 three 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 next largest group that will have a fiscal impact on DOC are those persons who violate the provisions of the SOR statutes, either by failing to register as required or by giving false information. The proposed legislation would require a judge, in addition to any jail or prison sentence, to require a period of post-release supervision, with GPS tracking, of such offenders. The period of post-release supervision would vary, based on the frequency of the SOR violation and the severity of the sex offense for which the offender is required to register. The Virginia Criminal Sentencing Commission reports that, over a two-year period, 168 of the most serious sex offenders were convicted of a SOR violation. Under the proposed legislation, such offenders would be placed on post-release supervision for two years. Another 94 less serious sex offenders were convicted of a SOR violation during the same period. Under the proposed legislation, such offenders would be required to be under post-release supervision for six months. Under the proposed legislation, some of these offenders would likely have to serve time in jail or prison before being under post-release supervision. Therefore, DOC would likely not be responsible for all of them during the next biennium. However, not enough information is available to project the average number of this group on post-release supervision in the next biennium. For the purposes of this analysis, it is assumed that DOC will be responsible for 168 by the end of the biennium.

The last 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 proposed 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 estimated 666 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 666 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.

The fiscal impact to DOC shown in the table at the beginning of this section assumes that a phasing in over the biennium of the 666 additional offenders for which DOC will be responsible.

The provisions 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.

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 make 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 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.

Prison bed space impact

Pursuant to §30-19.1:4 of the Code of Virginia, the Virginia Criminal Sentencing Commission estimates a fiscal impact of \$2,419,496 (the highest annual cost over the next six years). The amount is based on the projection that the legislation will result in 101 additional inmates being incarcerated in prison.

9. Specific agency or political subdivisions affected:

Department of Mental Health, Mental Retardation, and Substance Abuse Services
Department of State Police
Department of Corrections
Department of Juvenile Justice
Compensation Board
Local and regional jails
Supreme Court

Attorney General
Colleges and universities
Community colleges
Department of Motor Vehicles

10. Technical amendment necessary: None.

11. Other comments: None.

Date: 02/02/06 / dpbrwh

cc Secretary of Finance
Secretary of Health and Human Resources
Secretary of Public Safety