Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 559

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

LD#: 06-4023820 **Date:** 3/13/2006

Topic: Sex Offender Registry

Fiscal Impact Summary:

- **State Adult Correctional Facilities:** $2,419,496 (101 beds)
- **Local Adult Correctional Facilities:** -36,119 (-4 beds)
- **Adult Community Corrections Programs:** Cannot be determined
- **Juvenile Correctional Centers:** None ($0)
- **Juvenile Detention Facilities:** None ($0)

Summary of Proposed Legislation:

The proposal amends and adds a number of statutes related to the Sex Offender and Crimes Against Minors Registry (SOR) and certain sex crimes committed against minors. Much of the proposal is concerned with the mechanics of when the person required to register must provide information, who should collect that information, and when that information must be transmitted to the Department of State Police (VSP); the proposal concentrates on reducing the time-lag for obtaining and processing SOR information. The proposal requires that VSP, unless the person is under the control of the Department of Corrections (DOC, ensure physical verification of the initial registration or change of address within 30 days, and semi-annually thereafter; when the SOR registrant is under their control, DOC is required to conduct the physical verification of registration information. The proposal also increases the availability of SOR information by expanding whose information is available over the Internet, and making it easier for school officials and other individuals to be regularly updated on those who register and reregister with SOR. Portions of the proposal will have a delayed implementation; if adopted, some become effective on October 1, 2006, and others on January 1, 2007.

The proposal amends several statutes related to civil commitment. The offenses of abduction with intent to defile, abduction of a child under 16 for concubinage or prostitution, carnal knowledge of a child between 13 and 15, and carnal knowledge in custody of the court or state, as well as any felony conspiracy for a qualifying offense are all added as qualifying offenses for civil commitment consideration. The proposal changes from RASOR to STATIC-99 the risk assessment instrument used to identify prisoners forwarded to the Commitment Review Committee (CRC) for assessment, and allows for psychiatric or psychological assessment if the Director of the Department of Corrections and the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services agree that no specific scientifically validated risk assessment instrument exists. Any person granted conditional release under civil commitment must be subject to mandatory GPS monitoring. The proposal also creates an Office of Sexually Violent Predator Services within the Department of Mental Health, Mental Retardation and Substance Abuse Services.

The statutes addressed by the proposal that directly or indirectly affect crimes will take effect on July 1, 2006. The remainder of this impact analysis will focus on these statutes.

Under § 9.1-902, the proposal adds (a) first offense child pornography possession (§ 18.2-374.3), (b) criminal homicide in conjunction with a violation of §§ 18.2-371(i) (contributing to the delinquency of a minor) and 18.2-371.1 (child abuse and neglect), (c) a subsequent burglary conviction under § 18.2-91 and (d) criminal homicide in conjunction with a violation of §§ 18.2-371 or 18.2-371.1 when the offenses arise out of the same incident, where the offender has been at liberty between convictions and both crimes were with the intent to commit certain felony sex crimes that require SOR registration. The proposal also reduces the number of convictions under § 18.2-374.1 (production or distribution of child pornography) required to constitute a "sexually violent offense" from two (provided that the person had been at liberty between convictions) to one. The crimes associated with SOR violations are defined in § 18.2-472.1 and also have proposed amendments. Currently, an SOR violation for a sexually violent offender (SVO) is a Class 6 felony, otherwise the violation is a Class 1 misdemeanor. The proposal retains the current penalty structure for a first conviction, but for a second conviction the penalties are enhanced to a Class 5 felony for a SVO, and to a Class 6 felony for other offenses. In addition, under the proposed § 19.2-295.2:1, the court shall impose an added term of postrelease supervision when sentencing for an SOR violation; when the penalty for the SOR violation is a Class 1 misdemeanor, the postrelease supervision is six months; when the SOR violation penalty is a Class 6 felony, the postrelease supervision is two years; and when the SOR violation penalty is a Class 5 felony, the postrelease supervision is five years.

For the crimes of abduction with intent to defile (§ 18.2-48(ii)) or abduction of a child under 16 for the purpose of concubinage or prostitution (§ 18.2-48(iii)) the proposal adds a minimum requirement of a 40-year suspended sentence if the offender is sentenced to less than life imprisonment.

For the crimes of rape (§ 18.2-61), forcible sodomy (§ 18.2-67.1) and object sexual penetration (§ 18.2-67.2), if the victim is a child under the age of 13, the offender is more than three years older, and if the crime was done in the commission of, or subsequent to, a violation of certain abductions (§§ 18.2-47(A) or 18.2-48), certain burglaries (§§ 18.2-89, 18.2-90 or 18.2-91), or aggravated malicious wounding (§ 18.2-51.2), the proposal adds, in each statute, (a) a mandatory minimum penalty of 25 years and (b) the requirement that if the active sentence is less than life imprisonment, then the court shall suspend a minimum of 40 years. In addition, under the proposed § 19.2-303, if any time is suspended, then the amount of suspended time must equal the statutory maximum and that the offender be placed on postrelease supervision for at least three years including electronic monitoring by Global Positioning System (GPS). Currently, none of these crimes have mandatory minimum sentences unless prosecuted under the provisions of § 18.2-67.5:3 for a subsequent offense, and there are no specific requirements regarding suspended time or postrelease supervision.

The proposal amends § 18.2-370.2 prohibiting persons convicted of certain crimes from loitering within 100 feet of the premises of any primary, secondary or high school in two ways. First, the proposal adds child day programs to the list of prohibited premises. Second, the list of prior convictions is expanded to include an SOR violation if the registration offense was for one of the crimes already listed.

The proposal also creates two new crimes that apply to persons convicted of rape (§ 18.2-61), forcible sodomy (§ 18.2-67.1) and object sexual penetration (§ 18.2-67.2), if the victim is a child under the age of 13. The proposed § 18.2-370.3 prohibits such persons from residing within 500 feet of the premises of a school or child day center. The proposed § 18.2-370.4 prohibits such persons from working on school or child day center property. Each crime is punishable as a Class 6 felony.

Also under the proposed § 19.2-303, the court is required, for those convicted for crimes under §§ 18.2-48 (abduction), 18.2-61 (rape), 18.2-63 (carnal knowledge), 18.2-67.1 (forcible sodomy), 18.2-67.2 (object sexual penetration), 18.2-67.3 (aggravated sexual battery), 18.2-370 (indecent

liberties) or 18.2-370.1 (custodial indecent liberties), to suspend time equal to the statutory maximum if any time is suspended.

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.

In fiscal year (FY) 2002 and FY2003, seven offenders were convicted of rape, forcible sodomy or object sexual penetration of a child under the age of 13 (in violation of § 18.2-61, 18.2-67.1, or 18.2-67.2) where the offender was also charged with an offense under §§ 18.2-47(A), 18.2-48, 18.2-51.2, 18.2-89, 18.2-90, or 18.2-91. All received a prison term where the median prison sentence (the middle value, where half the sentences were higher and half were lower) was 15 years.

In two years of Pre/Post-Sentence Investigation (PSI) and Local Inmate Data System (LIDS) data, no convictions under § 18.2-370.2 were recorded. However, 77% of the offenses that trigger registration with SOR already prohibit offenders with such convictions from loitering within 100 feet of school premises. The Code of Virginia does not mandate restrictions on specific proximity to schools for SOR registrants; however, judges may include such restrictions when sentencing the offender for the original offense that required registration with SOR. Failure to abide by court ordered restrictions could trigger a probation revocation resulting in the re-imposition of all or part of a suspended sentence.

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 offense. 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 identified as having prior convictions.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal has several elements that will increase the need for state-responsible (prison) bed space. Included among the portion for which an impact could be estimated were new mandatory minimums for certain sexual assaults, an expanded list of offenses requiring SOR registration, an enhanced penalty structure for subsequent convictions for SOR violations, and mandatory postrelease for SOR violations. The estimated impact for these portions would increase the number of prison beds needed by the Commonwealth by 101 by the year 2012. In addition, there are also two new proposed felonies for which the magnitude of the impact cannot be quantified, and the nature of some of the proposed changes may lead to substantial bed space needs that are outside of the six-year window required by § 30-19.1:4.

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

FY07	FY08	FY09	FY10	FY11	FY12
5	23	50	72	87	101

Local adult correctional facilities. The proposal also has several elements that will affect local-responsible (jail) bed space needs. The effects some of these elements have on bed space needs offset the effects of others. The estimated combined impact is a reduced need for four beds statewide; this represents a savings of $36,119 for the state, and $33,296 for localities.

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. There will likely be an impact on the need for adult community corrections programs, but the magnitude cannot be determined.

Virginia's sentencing guidelines. Convictions under §§ 18.2-48, 18.2-61, 18.2-67.1 and 18.2-67.2 are covered by Virginia's sentencing guidelines. The proposed mandatory minimums would be covered by the Commission's policy regarding mandatory minimum sentences. Convictions for other crimes affected by the proposal are not covered as the primary (most serious) offense at conviction, but will augment the guideline recommendation if the most serious offense at conviction is a covered offense. No adjustment to Virginia's sentencing guidelines is necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ) the proposal is not expected to increase juvenile correctional center (JCC) bed space needs mandatory minimums are not applicable to juvenile offenders. Also, the Department's Length of Stay (LOS) guidelines will not be affected by the proposed changes.

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

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least $2,419,496 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. 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.
6. The estimated number of offenders that would be sentenced for a postrelease revocation for an SOR violation was determined by assuming that the rate of recidivism would be the same as for sex offenders violating probation in FY1997 through FY2001; this rate was 44.4%

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 sexual assault offenses the rate was 11.1%. 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. Persons eligible for a mandatory term of 25 years under the proposal were treated as having been sentenced to the mandatory 25 years. If the actual sentence already exceeded the proposed mandatory minimum penalty, the case was presumed to have no impact.
4. 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.
5. To gauge the impact of mandatory postrelease supervision for SOR violations, it was assumed that a revocation would occur at the same rate as sex offenders violating probation in FY1997 through FY2001, and the timing of revocation would be adjusted to include satisfying the sentence for the SOR violation. It was assumed that the postrelease term that would be imposed upon revocation would be six months for the Class 1 misdemeanor, 2 years for the Class 6 felonies, and 3 years for the Class 5 felony SOR violations.

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