



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 905 (Patron – Jones, D.C.)

LD#: 08-6275580

Date: 12/26/2007

Topic: Statutory burglary

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$820,932 (30 beds)
- **Local Adult Correctional Facilities:**
-\$10,007 (-1 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 §§ 18.2-90 and 18.2-91 to increase the statutory minimum penalties for statutory burglary. Under the proposal, the penalty for burglary with the intent to commit murder, rape, robbery or arson, without a deadly weapon, would be changed from a Class 3 felony (punishable by 5 to 20 years) to a felony punishable by imprisonment for 10 to 20 years. The penalty for burglary with the intent to commit larceny, etc., without a deadly weapon would be changed from a range of 1 to 20 years to a range of 2 to 20 years.

The proposal also removes the option in § 18.2-91 for a judge or a jury to impose a 12-month jail sentence and/or a \$2,500 fine, in lieu of a prison term, for an offender convicted of burglary with the intent to commit larceny, etc., without a deadly weapon.

Analysis:

According to fiscal year (FY) 2006 and 2007 Sentencing Guidelines data, there were 35 cases in which the primary, or most serious, offense at sentencing was burglary with intent to murder, rape, or rob without a deadly weapon under § 18.2-90. The majority of these cases (83%) were given a state-responsible (prison) term with a median effective sentence (imposed sentence less any suspended time) of 3.3 years.

During the same two-year period, there were 2,578 cases in which burglary with intent to commit larceny, etc., without a deadly weapon under § 18.2-91 was the primary offense at sentencing. Just over half (53%) of the offenders were given a state-responsible (prison) term, for which the average effective sentence was three years. More than 20% of these offenders were given a local-responsible (jail) term with a median effective sentence of six months. The remaining 27% were not given an active incarceration term to serve.

These data indicate that judges imposed a sentence below the proposed statutory minimum in 6% of the cases involving burglary with intent to commit, murder, rape, robbery or arson and in 2% of the cases of burglary with intent to commit larceny.

Impact of Proposed Legislation:

State adult correctional facilities. Because it increases the statutory minimum for existing felonies, the proposal is expected to increase the need for state-responsible (prison) beds. When sentencing, a jury is required by law to impose at least the statutory minimum penalty specified in the *Code*. Although a judge is statutorily permitted to suspend time from the jury's sentence, it is uncommon for a judge to do so (sentencing guidelines data indicate that judges modify jury sentences in only one in five cases). Through its effect on jury sentencing, the impact of the proposal is estimated to be five beds by FY2014. However, the actual impact is likely to be much greater. Under the proposal, judges who impose sentences at the statutory minimum and then suspend time will have to impose a longer sentence (at least the proposed statutory minimum) and suspend additional time in order to achieve the same active incarceration periods they currently give. Likewise, judges who currently utilize the jail sentencing option for certain burglary offenders will have to impose at least the proposed statutory minimum and suspend more time than they do now in order to maintain the same active incarceration periods. This leaves more suspended time that can be re-imposed should an offender violate his probation or other community supervision. If burglary offenders recidivate at the same rate as larceny offenders and judges re-impose all of the new suspended time for the violation, the impact of this aspect of the proposal is estimated to be 25 beds by FY2014. The total impact, therefore, is expected to be 30 beds in FY2014. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$820,932.

Local adult correctional facilities. By removing the discretion of a jury to sentence an offender to a term of confinement in jail, the proposal is expected to reduce the number of local-responsible (jail) beds needed. The impact is estimated to be a decrease of approximately one bed by FY2014 (state savings: \$10,007; local savings: \$10,036).

Adult community corrections resources. The impact of state community corrections resources cannot be determined. The proposal could delay the need for services for some felony offenders affected by the proposal, as they will be serving longer incarceration terms than those currently served by offenders convicted of this crime. However, the proposal is expected to result in longer periods of suspended time for many offenders, who may then have longer periods of community supervision to satisfy. The overall impact on community corrections cannot be determined.

Virginia's sentencing guidelines. Convictions under §§ 18.2-90 and 18.2-91 are covered by the sentencing guidelines. No adjustment to the guidelines is necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), changes to statutory minimums do not have an impact on DJJ's Length of Stay (LOS) guidelines; therefore, 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 the bed space needs of juvenile detention facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$820,932 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 of Public Safety's Committee on Inmate Forecasting in 2007.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety's Committee on Inmate Forecasting and approved in July 2007.
3. Cost per prison bed was assumed to be \$27,452 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 FY2006 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.42 per day or \$10,381 per year. The local cost was calculated by using the daily expenditure cost of \$61.48 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 \$28.51 per day or \$10,413 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*** Note: The Compensation Board does not include data from jails that were not in operation for the entire fiscal year. Middle River Regional Jail was excluded because it opened during FY2006, while Augusta and Tazewell Counties were excluded because their jails were closed during the same time period; Augusta County now participates in the new Middle River Regional Jail and Tazewell County now participates in the Southwest Virginia Regional Jail.

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2008, 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, 2006. For nonviolent crimes, this rate was 11.29%.
3. To gauge the impact of proposed penalty structure, jury sentences that fell below the proposed statutory minimum were adjusted to be equal to the proposed statutory minimum. In all of the affected cases, the offender had been convicted for a violation of § 18.2-91.
4. It was assumed that judges who impose sentences at the current statutory minimum and then suspend time will impose exactly the proposed statutory minimum and suspend additional time in order to achieve the same active incarceration periods they currently give. It was also assumed that judges who currently utilize the jail sentencing option for certain burglary offenders will impose the proposed statutory minimum and suspend more time than they do now in order to maintain the same active incarceration periods.
5. To estimate the portion of burglary offenders who recidivate, it was assumed that burglary offenders will have a 40% recidivism rate. This is the rate at which felony larceny offenders recidivated during the Sentencing Commission's most recent nonviolent offender risk assessment study (see the Commission's *2001 Annual Report*). This is the rate at which larceny offenders were reconvicted of a new felony within three years of the original offense. It does not include offenders who violate probation supervision for reasons other than a new crime. In this respect, the impact estimate is conservative.
6. To gauge the potential impact, it was assumed that judges will re-impose all of the new suspended time for offenders who are returned to court for a probation violation stemming from a new felony conviction.

burglary01_6275