



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 590

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

**ID#:** 08-0264248

**Date:** 1/29/2008

**Topic:** Sex Offender Registry

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
At least \$351,376 (13 beds)
- **Local Adult Correctional Facilities:**  
-\$35,851 (-3 beds)
- **Adult Community Corrections Programs:**  
State: Cannot be determined  
Local: Cannot be determined

- **Juvenile Correctional Centers:**  
Cannot be determined
- **Juvenile Detention Facilities:**  
Cannot be determined

#### Summary of Proposed Legislation:

The proposal amends § 9.1-902 to expand offenses for which registration with the Sex Offender and Crimes Against Minors Registry (SOR) is required, to expand the definition of a “sexually violent offense” for registration purposes, and to increase the penalty for certain offenders who fail to register or re-register as required.

For offenders convicted of the following crimes, the proposal removes the requirement that the offense had to have been committed on or after July 1, 2006, for registration requirements to apply:

- § 18.2-91—Burglary with intent to commit a felony sex offense listed under § 9.1-902;
- § 18.2-374.1:1(A)—Possession of child pornography; and
- § 18.2-67.5:1—Third or subsequent felony conviction for sexual abuse.

The proposal expands the definition of a “sexually violent offense” by adding kidnapping (§18.2-48(i) and (iii)) and carnal knowledge of a victim age 13 or 14 (§ 18.2-63(A)) to the list of crimes for which a first conviction, rather than a second, requires registration. However, under subsection H of the proposal, a person convicted of carnal knowledge of a victim age 13 or 14 (§ 18.2-63(A)) may be exempt from the sexually violent offense registration requirements if he is under the age of 21 at the time of the offense, five years or less older than the victim, and has never been convicted of any other offense for which registration is required. Under these circumstances, the person may petition the court for exemption, and if granted, would be required to register under subsection B of § 9.1-902 rather than as a sexually violent offender under subsection E.

The proposal increases the penalty for the first SOR violation for offenders who are not defined as sexually violent from a Class 1 misdemeanor to a Class 6 felony. The penalty for a second or subsequent violation would remain a Class 6 felony under the proposal. The penalties for sexually violent offenders who violate SOR requirements would remain unchanged (Class 6 felony for the first violation and a Class 5 felony for a second or subsequent violation).

The proposal would also require the State Police and probation officers to verify the registration information of sexually violent offenders quarterly instead of semiannually. Finally, the proposal would extend the period of time an offender must continue to register before he can petition the court to have his name removed from the Registry.

The General Assembly has revisited § 9.1-902 several times in recent years. In the 2007 session, the section was reorganized as part of an expansion of the offenses requiring registration and the information required of registrants. In 2006, there was an expansion of the offenses requiring registration and the penalties for second SOR violations were increased. In addition, registration requirements were expanded to include most juveniles adjudicated delinquent for a Registry offense.

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### Analysis:

The Local Inmate Data System (LIDS) contains the most recent misdemeanor data reflecting the new penalties that became effective on July 1, 2006. Between July 1 and December 31, 2006, there were 45 offenders held pre- or post-trial in jail who were convicted of a Class 1 misdemeanor violation under §18.2-472.1. For 43 of the 45 offenders, this offense was the most serious charge at conviction. The majority of these offenders (70%) were given a local-responsible (jail) term with a median sentence of just under two months. The remaining offenders were given no active incarceration term to serve (7% of cases) or, due to multiple misdemeanor convictions, were given a state-responsible (prison) term (23% of cases) with a median sentence of just under three years. Under the proposal, offenders convicted of this Class 1 misdemeanor would be guilty of a Class 6 felony. Of the total, two offenders could be identified as having received the current maximum penalty of 12 months for this offense.

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### Impact of Proposed Legislation:

**State adult correctional facilities.** There are three elements to the proposal that are expected to increase the need for state-responsible (prison) beds. First, expanding the list of Registry offenses is likely to increase the number of prison beds needed for an additional number of offenders who will violate SOR provisions. Second, increasing the frequency with which the State Police and probation officers must verify registration information may result in the detection of additional violations. The impact of these two aspects of the proposal cannot be quantified. Third, increasing the penalty for the first Registry violation for offenders not defined as sexually violent is expected to increase bed space requirements. The impact of this aspect of the proposal is estimated to be 13 beds by FY2014. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$351,376.

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

FY09	FY10	FY11	FY12	FY13	FY14
5	10	12	12	13	13

**Local adult correctional facilities.** Because some offenders currently receiving a jail sentence would instead receive a prison term, the proposal is expected to result in a decrease in the need for local-responsible (jail) beds. The impact is estimated to be a net decrease statewide of three beds by FY2014 (state savings: \$35,851; local savings: \$35,962).

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

FY09	FY10	FY11	FY12	FY13	FY14
-3	-3	-3	-3	-3	-3

**Adult community corrections resources.** Raising a crime from a Class 1 misdemeanor to a Class 6 felony may decrease the demand for local community-based probation services and increase the need for state community corrections resources. The *Code of Virginia*, however, allows judges to utilize local community-based probation programs for Class 5 and Class 6 felons as well as misdemeanants. The proposal could also result in felony convictions and subsequent supervision requirements for an

additional number of offenders. Data are not available to estimate the proposal's impact on local or state community corrections resources.

**Virginia's sentencing guidelines.** The guidelines do not cover conviction under § 18.2-472.1 when this crime is the primary (most serious) offense in the case. A conviction under one of these provisions, however, could augment the guidelines recommendation as an additional offense if the most serious offense at sentencing is covered by the guidelines. No adjustment to the sentencing guidelines would be necessary under the proposal.

**Juvenile correctional centers.** Because the proposal increases the penalty for certain SOR violations from a Class 1 misdemeanor to a Class 6 felony and expands the number of those required to register with SOR, the proposal could result in additional commitments to DJJ. Existing *Code* specifies that a juvenile is eligible for commitment if he is adjudicated for a felony, has a prior felony adjudication, or has accumulated a total of four Class 1 misdemeanor adjudications. The proposal may have an impact on juvenile bed space due to additional commitments, but the size of the impact cannot be quantified.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the impact on the bed space needs of juvenile detention facilities cannot be determined.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$351,376 for periods of imprisonment in state adult correctional facilities and cannot be determined 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 sex offense crimes, this rate was 12.06%.
3. To gauge the impact of proposed penalty structure, it was assumed that the distribution of sentences for offenders affected by the proposal will be similar to the distribution of sentences for Class 6 felony convictions for a second violation of SOR requirements under the current provisions of § 18.2-472.1(A).