



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2179

(Patron – Scott, E.T.)

ID#: 08-5955716

Date: 12/9/2008

Topic: Credit for time spent in confinement while awaiting trial

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$308,795 (11 beds)
- **Local Adult Correctional Facilities:**
\$858,106 (82 beds)
- **State Community Corrections Programs:**
None (\$0)

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

Summary of Proposed Legislation:

The proposal amends § 53.1-187 to permit the court to reduce or eliminate the amount of pretrial jail credit that is applied towards an offender's sentence if the offender had violated the terms of bail release while awaiting trial. Currently, all of the time a person spends confined in a local correctional facility while awaiting trial is credited towards his or her sentence.

Analysis:

According to a sample from FY2006 and FY2007 Pre/Post-Sentence Investigation (PSI) data, 4.7% of felons were released to bail but were confined on at least two occasions prior to trial for the offense. For a person to be confined more than once prior to trial suggests that his bail had been revoked either voluntarily (e.g., he turned himself in to start serving an anticipated term of incarceration) or involuntarily (e.g., he was arrested for a new offense or other violation of terms). The felons examined spent a median of 52 days confined pretrial. Extrapolating to all of the PSI data (38,017 cases), it is estimated that about 900 felons each year could lose some or all of their pretrial jail credit. The actual number of affected felons could be higher since PSI data for FY2007 and FY2008 is not complete.

According to the Local Inmate Data System (LIDS) for calendar years (CY) 2006 and CY2007, a total of 17,147 inmates booked into jail on a misdemeanor charge (as the most serious offense) were released to bail but returned to custody prior to trial. Of the total, LIDS data indicate that 637 were subsequently convicted of the misdemeanor charge (these offenders spent a median of nine days confined pretrial). In general, however, LIDS conviction data are available only for offenders who were confined on the day they were convicted or were ordered to serve incarceration time following sentencing. Therefore, the actual number of misdemeanants affected by the proposal is likely to be much higher. It is estimated that the number of affected misdemeanants will be closer to 1,400 per year. This estimate was calculated by comparing the number of felony convictions in PSI data to felony convictions that can be identified in LIDS and applying that ratio to the number misdemeanor convictions found in LIDS data (the ratio is approximately 2.2:1). Using this estimate, nearly 1,400 misdemeanor offenders each year could lose some or all of their pretrial jail credit.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal would allow the court to withhold pretrial jail credit from offenders who violated the conditions of bail release. As a result, some offenders will have fewer credits to apply towards the sentence to be served. This will result in longer lengths-of-stay after sentencing and, therefore, will increase the need for state-responsible (prison) beds. If judges withhold all of the pretrial jail credit from eligible offenders, the impact is estimated to be 11 beds by 2015. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$308,795.

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

FY10	FY11	FY12	FY13	FY14	FY15
4	7	8	9	10	11

Local adult correctional facilities. Similarly, the proposal is expected to increase the need for local-responsible (jail) beds. The impact on local-responsible (jail) beds is estimated to be 82 beds by FY2015 (state costs: \$858,106; local costs: \$886,195).

Estimated Six-Year Impact in Local-Responsible (Jail) Beds

FY10	FY11	FY12	FY13	FY14	FY15
81	81	81	80	77	82

Adult community corrections resources. The proposal is not expected to increase the need for community corrections resources and will likely delay the need for services for offenders affected by the proposal, as they will be staying in prison or jail longer prior to being released to the community.

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.

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 \$308,795 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 2008.
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 2008.
3. Cost per prison bed was assumed to be \$27,294 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 FY2007 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.77 per day or \$10,509 per year. The local cost was calculated by using the daily expenditure cost of \$62.56 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 \$29.71 per day or \$10,853 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 the number of offenders

1. To identify the number of felony offenders whose bail was revoked, a sample of 3,149 cases was taken from FY2006 and FY2007 Pre/Post-Sentence Investigation data. In that sample of sentenced felons, 150 offenders had been released to bail but were confined on at least two occasions prior to trial for the offense. It was assumed that these offenders had been returned to pretrial confinement because of a bail revocation. The resulting percentage (150/3,149 or 4.7%) was used to estimate that 1,811 of the 38,017 felons in the FY2006 and FY2007 PSI data had their bail revoked (approximately 900 per year).
2. To identify the number of misdemeanor offenders whose bail was revoked, data from the CY2006 and CY2007 Local Inmate Data System (LIDS) was analyzed. According to these data, 17,147 inmates booked into jail on a misdemeanor charge (as the most serious offense) were released to bail but returned to custody prior to trial. LIDS data indicate that 637 of these offenders were subsequently convicted of the misdemeanor charge. In general, however, conviction data are recorded in LIDS only for offenders who were confined on the day they were convicted and offenders who were ordered to serve incarceration time following sentencing. Therefore, the actual number of misdemeanants affected by the proposal is likely to be much higher. An estimate of the number of affected misdemeanants was calculated by comparing the number of felony convictions in PSI data to felony convictions that can be identified in LIDS and applying that ratio (approximately 2.2:1) to the number misdemeanor convictions found in LIDS data. This method results in an estimate of 2,760 misdemeanants who could have been affected by the proposal in CY2006 and CY2007 (approximately 1,400 per year).

Assumptions relating to time served

1. The impact of the proposed legislation, which would be effective for persons sentenced on or after July 1, 2009, is treated as being immediately available to judges on that date.
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, 2007. For all offenders, this rate was 11.34%.
3. To gauge the impact of the proposal, it was assumed that judges will withhold all of the pretrial jail credit from eligible offenders. Therefore, the time to be served after sentencing was assumed to increase by the number of days of jail credit recorded in either PSI or LIDS.

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