

Department of Planning and Budget

2010 Fiscal Impact Statement

1. Bill Number: HB 927

House of Origin	<input type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input checked="" type="checkbox"/>	Enrolled

2. Patron: Bell

3. Committee: Passed both houses

4. Title: Immediate sanction probation program

5. Summary:

Under current law, a judge may suspend the sentence of a convicted offender and place him on probation under certain conditions. If that offender violates any of those conditions, even if no new criminal offense is committed, he is subject to arrest and the judge may revoke the suspension and reimpose the original sentence.

The proposed legislation defines a new type of procedure with dealing with probation violators—an immediate sanction probation program—and authorizes the establishment of one such program in the Commonwealth. Upon the establishment of the program, the court could order a defendant convicted of a nonviolent crime to participate in it. If an offender participating in the program failed to comply with any term or condition of his probation, his probation officer would have him arrested immediately. Upon being arrested, the offender would be subject to an immediate sanction hearing, unless (i) it were alleged that the offender had committed a new crime, (ii) the offender had absconded for more than seven days, or (iii) the offender, the Commonwealth, or the court objects. The immediate sanction hearing would proceed with counsel and the court would review the allegations of the probation officer and any other evidence. If the court found good cause to believe that the offender had violated the terms of his probation, it could revoke the offender's probation and commit the offender to jail for up to 30 days.

The legislation requires the Virginia Criminal Sentencing Commission to report to the chairmen of the Senate and House Courts of Justice Committees on or before January 12, 2012 on the operation and costs of the immediate sanction probation program. The bill also authorizes the Sentencing Commission to calculate the impact of a revocation of a suspended sentence in the immediate sanction probation program differently than it calculates the impact of a revocation in other instances.

The provisions of the legislation are to expire on July 1, 2012.

6. Fiscal Impact Estimates: Indeterminate. Final. See Item 8.

7. Budget Amendment Necessary: None.

8. Fiscal Implications:

The immediate sanction probation program that would be authorized in this legislation is a pilot program based on the principles used in the Project HOPE program in Hawaii. According to experts familiar with that program, including the judge who started it, additional resources will be needed in order for it to be successful. The program relies heavily on frequent drug testing of participants in the program. Providing for such testing will be the primary additional expense. The basic premise of the program is immediate sanction for any violation. To provide such celerity may require additional probation officers and staff in the jails and courts.

The budget bill approved by the General Assembly did not include any additional appropriation for the establishment of an immediate sanction probation program. There is the possibility that federal grant funds will be available in the next federal fiscal year for this type of program. If the U.S. Congress does make such funding available, it is felt that the Commonwealth will be in a good position to receive a grant for a pilot program.

Evaluations of Hawaii's Project HOPE indicate that the program is successful in reducing recidivism. Although it is not feasible now to project the costs of implementing this type program statewide in the Commonwealth, if it were successfully implemented, its costs could be offset by savings in two areas. The first area is that of per diem payments made by the state to localities or regional jail authorities for each offender housed in a local or regional jail. Under the provisions of the budget bill recently adopted by the General Assembly, the state will pay each locality or regional jail authority \$4 per day for each person held in jail awaiting trial. Data from the Compensation Board indicates that the average stay in FY 2009 for persons held in jail awaiting a probation revocation hearing was 61 days. The Virginia Criminal Sentencing Commission has reported that, in FY 2008, there were 6,365 probation revocation hearings for offenders who failed to comply with probation conditions (commonly called "technical violators"). Assuming a comparable average length of stay in jail for technical violators awaiting their revocation hearings and a comparable number of revocation hearings for technical offenders, the state would pay \$1.6 million annually in per diem payments for technical violators held in jail awaiting their hearings without the immediate sanction probation program. According to evaluations, the HOPE program has significantly reduced the amount of time technical violators spend in jail.

The second area of potential savings is the possible reduction of technical violators committed to the Department of Corrections (DOC) after having their probation revoked. In FY 2008, approximately 1,500 technical violators were committed to DOC. The average sentence imposed on these offenders was more than two years. According to DOC, at the end of FY 2008, there were 2,481 technical violators in the state responsible population for which DOC is responsible. That is equivalent to more than two 1,000-bed prisons, which cost \$20-25 million annually each to operate. An evaluation of the HOPE program has shown a reduction in the number of technical violators recommitted to prison. To the extent that such a program could be successfully implemented throughout the Commonwealth, the number of technical violators in the state responsible population could be reduced, along with the need to construct new prisons in the future.

9. Specific Agency or Political Subdivisions Affected:

Department of Corrections
Compensation Board
Circuit courts
Local and regional jails

10. Technical Amendment Necessary: None.

11. Other Comments:

Because more than one locality has expressed interest in establishing an immediate sanction probation program, it is recommended that the bill be amended to authorize “up to two” programs, rather than just one.

The budget bill recently passed by the General Assembly directs the creation of a program similar to the one proposed in this legislation. Item 39 of the budget bill establishes two pilot programs, rather than the one authorized by HB 927. Another major difference is that HB 927 sets out requirements for the program, whereas the budget bill language only gives general guidance, directing that the programs be based on the “principles used for the HOPE program developed in Hawaii and leaves it up to the Supreme Court to develop the operating procedures for the program. Consideration should be given to either removing the language in the budget bill or modifying it to be consistent with this legislation.