

Department of Planning and Budget

2010 Fiscal Impact Statement

1. Bill Number: HB 927

House of Origin ☐ Introduced ☒ Substitute ☒ Engrossed
Second House ☒ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Bell

3. Committee: Senate Courts of Justice

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 would establish a new process whereby a court could order a defendant convicted of a nonviolent crime to participate in an immediate sanction probation program. If an offender participating in any such program fails to comply with any term or condition of his probation, his probation officer shall immediately have him arrested. Upon being arrested, the offender would be subject to an immediate sanction hearing, unless the offender, the Commonwealth, or the court objected or the offender refused to waive counsel. The immediate sanction hearing is to proceed with counsel and the court is to review the allegations of the probation officer and any other evidence. If the court finds good cause to believe that the offender has violated the terms of his probation, it may commit the offender to jail for up to 30 days.

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

7. Budget Amendment Necessary: None.

8. Fiscal Implications:

The proposed legislation could result in 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. Presently, the state pays the locality or regional jail authority \$8 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 that

the average length of stay in jail for technical violators awaiting their revocation hearings in FY 2008 was 61 days, the amount of per diem payments made by the state for these offenders in FY 2008 was approximately \$3.1 million. The localities also experienced additional costs.

Evaluations of programs in other states similar to the one proposed in HB 927 indicate a significant reduction in the number of days spent by technical violators in jail awaiting revocation hearings. Although it is not feasible to project the amount of possible savings because the number of offenders who would be ordered to participate is not known and it is not known how judges would implement the program, based on the experience in other states, there could be significant savings in state per diem payments and costs to localities as a result of this legislation.

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. To the extent that judges and offenders on probation would use the process proposed in HB 927 as an alternative to probation revocation and recommitment to DOC, the number of technical violators in the state responsible population would 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
Local and regional jails

10. Technical Amendment Necessary: None.

11. Other Comments:

Both the Senate and House versions of the budget bill recently passed by the respective houses direct the creation of a program similar to the one proposed in this legislation. Item 39 of the budget bill establishes two pilot programs to be based on the principles used for Project HOPE in Hawaii. A primary difference between Project HOPE and the process in the proposed HB 927 is in the timing of the commitments to the program. HB 927 seems to contemplate that courts would order offenders to participate in the program as a condition of probation when they were first convicted, whereas judges in Project HOPE direct that offenders who have a history of noncompliance with probation conditions be subject to the program, not when they are first convicted.

Because HB 927 would not require courts to use the immediate sanction probation program, it is possible that provisions of the legislation, if enacted, could serve as a framework for the pilot programs established by the budget bill language.