



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1409

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

LD #: 11104744

Date: 1/26/2011

Topic: Sex Offender Registry

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 874 of the 2010 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends several provisions of the *Code* relating to the state's Sex Offender and Crimes against Minors Registry.

Regarding offenses committed on or after July 1, 2012, the proposal: 1) expands the offenses requiring registration to include video voyeurism (18 U.S.C. § 1801), and 2) adds the first offense relating to sodomy of one's child or grandchild, when such child is between 13 and 17 years of age, to the list of sexually violent offenses. Currently, sodomy of a family member is considered a sexually violent offense only if the offender has previously been convicted or adjudicated delinquent of two or more sexually violent offenses and he was at liberty in between such convictions/adjudications. The proposal divides § 18.2-361(B) to more easily reference the specific crimes contained therein, but it does not make any substantive change to this section of the *Code*.

Regarding registration procedures, the proposal expands the list of information required when an offender registers and reregisters to include passport and immigration information. Also, the proposal requires that the offender submit to be photographed at the time of physical verification under § 9.1-907, rather than every two years. This would require that the photograph be updated at least semiannually, which would coincide with the times the State Police or Department of Corrections must physically verify the registration information.

Juveniles who are adjudicated delinquent of Registry offenses in juvenile court are not required to register; however, juveniles who were over the age of 13 at the time of the offense may be required to register if, upon motion of the Commonwealth's attorney, the court finds that the circumstances of the offense require offender registration. The proposal excludes juveniles who are adjudicated delinquent in juvenile and domestic relations court from the list of individuals whose information must be disseminated publicly on the Sex Offender and Crimes against Minors Registry.

The General Assembly has revisited § 9.1-902 several times in recent sessions. In the 2007 session, the section was reorganized as part of an expansion of the offenses requiring registration and the information required of registrants (the legislation also restructured the penalties involving child pornography). During the 2006 session, there was an expansion of the offenses requiring registration and the penalties for second or subsequent Registry violations were increased. The 2005 and 2008 General Assemblies also expanded the offenses requiring registration. Since July 1, 2005, judges have had the authority to require juveniles adjudicated of specified crimes to register as sex offenders if the juvenile was age 14 or older when the offense was committed.

Analysis:

The General District Court Automated Information System (CAIS) contains the most recent data for misdemeanor violations related to failing to register or reregister as required or providing false information to the Registry. In fiscal year (FY) 2009 and FY2010, 387 offenders who were not defined as sexually violent were convicted of a misdemeanor for a Registry violation (as the most serious offense). Of these offenders, 47% did not receive an active term of incarceration. The median sentence length for the 53% who were given a local-responsible (jail) term was 2.0 months.

According to the Circuit Court CAIS database for FY2008 and FY2009, there were 829 felony convictions for a Registry violation under § 18.2-472.1 during this time period. For 646 of these offenders, the Registry violation was the most serious offense at sentencing. While nearly half (45%) of these offenders received a local-responsible (jail) sentence (with a median sentence of 6 months), 34% received no active term of incarceration. For the remaining 21% of offenders who were given a state-responsible (prison) term, the median sentence was 1.0 year.

The Department of Juvenile Justice (DJJ) does not track how many juveniles are actually required to register on the Registry unless they are committed to DJJ. On February 1, 2008, DJJ's Reception and Diagnostic Center began to collect information on juveniles required to register as sex offenders. Of the 71 juveniles committed to DJJ in FY2009 and FY2010 for an offense that would make each of those juveniles eligible for registration on the Registry under the current law, the juvenile and domestic relations (J&DR) courts required registration for 11 of those juveniles.

The number of juveniles who subsequently violate the Sex Offender and Crimes Against Minors Registry requirements is not known.

Impact of Proposed Legislation:

State adult correctional facilities. By adding to the list of crimes for which individuals must register, expanding the list of sexually violent offenses, and requiring additional information from registrants, the proposal could result in additional felony convictions for violations of Registry provisions. In this way, the proposal could increase the future state-responsible (prison) bed space needs of the Commonwealth. However, data are not sufficiently detailed to estimate how many additional felony convictions may result if the proposal is enacted. Therefore, the magnitude of the impact cannot be quantified.

Local adult correctional facilities. Similarly, the magnitude of the impact on local-responsible (jail) bed space needs cannot be quantified.

Adult community corrections resources. The potential impact on community corrections resources cannot be quantified.

Virginia’s sentencing guidelines. Convictions under § 18.2-472.1 are not covered by the current sentencing guidelines as the primary (most serious) offense in a case. Such a conviction, however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

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. According to the Department of Juvenile Justice (DJJ), 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 cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 874 of the 2010 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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