

Department of Planning and Budget 2012 Fiscal Impact Statement

1. Bill Number: HB 1271

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

2. Patron: Jones

3. Committee: Passed both houses

4. Title: Sexually violent predators

5. Summary:

State law defines a “sexually violent predator” as someone who (i) has been convicted of at least one of a specified group of sexually violent offenses and (ii) “because of a mental abnormality or personality disorder, finds it difficult to control his predatory behavior, which makes him likely to engage in sexually violent acts.” A person who has been determined to be a sexually violent predator can be involuntarily committed to the Department of Behavioral Health and Developmental Services (DBHDS) for treatment after he has completed serving a prison sentence for the sexually violent offense. The Code of Virginia sets out a procedure for determining whether an offender meets the second part of the definition of sexually violent predator. The proposed legislation would amend those procedures.

Currently, the law requires the Department of Corrections (DOC) to identify those offenders in its custody who have committed one of the defined sexually violent offenses. Within about 10 months of the scheduled release of any such inmate, the department is required to use an assessment instrument called the Static 99 for such inmate. If the inmate receives a score of four or five, depending on his offense, the department is required to refer the inmate to the Commitment Review Committee (CRC). The CRC is composed of employees of the DOC, DBHDS, and the Attorney General’s office. Using licensed psychologists and psychiatrists, the CRC assesses the inmate to determine if he meets the definition of a sexually violent predator. Upon completion of its assessment, the CRC makes a recommendation to the Attorney General regarding the inmate. The Attorney General then makes a decision whether to ask a court to declare the inmate a sexually violent predator and involuntarily commit him.

The proposed legislation would add an additional criterion for referring an inmate to the CRC for evaluation as a sexually violent predator. In addition to those inmates who received the minimum score on the Static-99, DOC would be required to refer those inmates whose records contained such “aggravating circumstances” that lead the director of DOC to determine that they appear to meet the definition of a sexually violent predator.

The proposal does include an exemption that is not in the current law. DOC would not be required to refer those inmates who were so incapacitated by a permanent and debilitating medical condition or by a terminal illness that they did not pose a threat to public safety.

Finally, the proposed legislation makes one additional change in the procedure. Currently, the CRC has 120 days from receiving the referral from DOC to make its assessment and submit a recommendation to the Attorney General. The legislation would increase this timeframe to 180 days.

In a separate enactment clause, the legislation requires DOC to develop protocols to assess whether an individual meets the definition of a sexually violent predator. The primary tool of the protocols must be a risk assessment instrument and corresponding reference score. DOC is directed to submit a report on the protocols to the Governor and the General Assembly by January 1, 2013.

The effective date of the legislation is delayed until January 1, 2013.

- 6. Budget Amendment Necessary:** No.
- 7. Fiscal Impact Estimates:** Final. See Item 8.
- 8. Fiscal Implications:**

Identifying those offenders who appear to meet the definition of sexually violent predator, other than those who receive the prescribed minimum Static-99 scores, may require some additional time and staff work by DOC. However, it is not possible to project how many of those inmates there may be and thus project whether there will be a significant fiscal impact on the agency.

However, the legislation could have a fiscal impact on the Department of Behavioral Health and Developmental Services, which is responsible for housing and treating persons involuntarily committed as sexually violent predators. By expanding the definition of who can be referred to the CRC, the legislation could result in additional persons being involuntarily committed. The average annual cost of housing and treating involuntarily committed sexually violent predators is approximately \$77,000 per person. It is not feasible to project the additional number of persons who might be committed as a result of this legislation.

- 9. Specific Agency or Political Subdivisions Affected:**
 - Department of Corrections
 - Department of Behavioral Health and Developmental Services
 - Office of the Attorney General

- 10. Technical Amendment Necessary:** None.

11. Other Comments: Identical to SB 314, which has been enrolled.

Date: 3/5/2012

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