# Fiscal Impact Statement for Proposed Legislation

*Virginia Criminal Sentencing Commission*

## House Bill No. 758
**(Patron – Adams, L.R.)**

**LD #:** 22103759 **Date:** 01/13/2022

**Topic:** Probation terms and sentences for technical violations

**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:** Cannot be determined **
- **Juvenile Detention Facilities:** Cannot be determined **

** Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 552 of the Acts of Assembly of 2021, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of $50,000.

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible (prison) and/or local-responsible (jail) beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

**Summary of Proposed Legislation:**

The 2021 General Assembly (Special Session I) passed legislation that limited the length of probation supervision, created new deadlines for notices of revocation hearings, defined technical violations, and restricted the time that may be imposed by a court when the defendant is found to have committed certain technical violations. Those provisions became effective on July 1, 2021.

The proposal repeals § 19.2-306.1 that went into effect July 1, 2022, and amends §§ 19.2-303, 19.2-303.1 and 19.2-306 of the *Code of Virginia*. Under § 19.2-303, the proposal provides that the court may fix the period of probation and the period of suspension for up to the statutory maximum period for which the defendant might originally have been sentenced to be imposed for any felony offense and up to five years for an offense punishable as a Class 1 or Class 2 misdemeanor. Currently, the limitation on periods of probation and periods of suspension is up to the statutory maximum period of imprisonment for any offense.

The proposal also adds the offense of crimes against nature (§ 18.2-361) to the list of offenses for which, if some period of the sentence for such offense is suspended, the judge is required to order that period of suspension be for the length of time equal to the statutory maximum period for which the defendant might originally have been sentenced.

Proposed changes to § 19.2-306 limit the amount of time that can be imposed for a first technical violation to no time. However, the restriction only applies when the court originally suspended the imposition of a sentence or suspended the execution of a sentence (§ 19.2-303.1). For a second technical violation, when the court originally suspended the imposition of a sentence or suspended the execution of a sentence, the court may suspend the sentence in whole or in part. It appears that if the court originally suspended a sentence in whole or in part under § 19.2-303, the restrictions do not apply.

The proposal makes changes to the definition of a technical violation by including good behavior violations that did not result in criminal convictions and excluding violations related to the possession or distribution of controlled substances, use or possession of a firearm, or absconding. It also clarifies that any specific or special term imposed by the court in a court order is not a technical violation.

**Analysis:**

According to Sentencing Guidelines data for fiscal year (FY) 2019 and FY2020, 3% of felony offenders were given a probation supervision term of more than five years (the limit set in current law in effect since July 1, 2021). During that two-year period, the median probation term was 18 months.

Based on FY2019-FY2020 Sentencing Revocation Report data, among felony offenders who had their probation/suspended sentence revoked for technical violations, 73.5% received a sentence of more than 14 days (the limit set in current law for most probationers who commit a second technical violation). For offenders given an active sentence to serve for technical violations, the median sentence was 4.0 months.

Because the legislation to establish the limits on supervised probation and sentences for technical violations only became effective on July 1, 2021, data are insufficient to examine practices emerging under current law. To the extent that interpretation and implementation of the current law have varied across the Commonwealth, the potential for disparity in the handling of revocations may have increased since its enactment. One Circuit Court judge in Virginia has ruled that the sentence limits specified in the new § 19.2-306.1 are unconstitutional. It is unclear the extent to which other judges may agree with that determination.

Following enactment of the legislation, the Commission adjusted the new Probation Violation Guidelines, which also took effect on July 1, 2021, to ensure they were compatible with the requirements of the new law. Specifically, the Guidelines were modified so that they will not recommend more incarceration time than permitted under the provisions of § 19.2-306.1**.**

**Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposed legislation would maintain existing caps in certain situations but remove the current caps on sentences for technical violations in many cases. By removing the caps, some felony offenders may be sentenced to supervised probation terms greater than the current five-year limit and sentences for some probationers found to have committed technical violations may be higher than under current law. Should additional offenders receive state-responsible (prison) terms for probation violations (compared to current law), the proposal may increase the future prison bed space needs of the Commonwealth. However, current data are insufficient to estimate the number of individuals likely to be affected by the proposed changes and the impact on sentencing. Therefore, the magnitude of the impact cannot be determined.

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

**Adult community corrections resources.** The impact on state community corrections resources and local community-based probation services cannot be estimated.

**Virginia's Sentencing Guidelines.** The Sentencing Commission issued revised Probation Violation Guidelines, effective July 1, 2021. The Probation Violation Guidelines, which were revised based on analysis of sentencing outcomes in revocation cases, were designed to provide judges with a benchmark of the typical, or average, outcome in similar cases. The historically-based Guidelines were then modified to be compatible with the law that took effect on July 1, 2021, such that the Guidelines will not recommend more incarceration time than permitted under § 19.2-306.1. If the proposed legislation is enacted, the Commission would reflect any revised statute-based restrictions.

**Juvenile direct care.** According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

---

**Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 552 of the Acts of Assembly of 2021, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of $50,000.**

**Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

prob07_3759