



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1041

(Patron – Griffith)

LD#: 08-0816806

Date: 1/8/2008

Topic: Civil commitment and conditional release of sexually violent predators

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Programs:**
Cannot be determined

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

Summary of Proposed Legislation:

The proposal modifies §§ 37.2-901, 37.2-902, 37.2-903, 37.2-904, 37.2-905.1, 37.2-905.2, 37.2-906, 37.2-907, 37.2-908, 37.2-909, 37.2-911, 37.2-912, 37.2-913, 37.2-914, 37.2-917, 37.2-918, and 53.1-32 and adds § 37.2-906.1 to change procedural and evidentiary requirements, document accessibility, and treatment programs relating to the civil commitment and conditional release of sexually violent predators.

The proposal expands civil commitment eligibility to include all offenders convicted of aggravated sexual battery against a child under the age of 13 who score four or more on the Static-99 scale; under existing *Code*, if the victim did not suffer physical injury, these offenders must score a five or more to be eligible for civil commitment evaluation.

The proposal also expands § 37.2-917 to make it a Class 6 felony for a sex offender subject to civil commitment provisions to abscond from supervision or custody. Currently, § 37.2-917 covers escapes from custody only. Moreover, the proposed amendment to § 37.2-918 specifies that a person placed on conditional release pursuant to this chapter who fails to return to the Commonwealth in violation of a court order is guilty of a Class 6 felony. Currently, only offenders who leave the Commonwealth without permission are covered under § 32.2-918.

Analysis:

According to the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS), as of 1/3/2008, there are currently 65 sex offenders civilly committed to the Department (of which, five are currently housed in local jails awaiting space in the Center for Behavioral Rehabilitation).

According to the Attorney General's Sexually Violent Predators Civil Commitment Section, as of 1/3/2008, there are three sex offenders currently on conditional release under civil commitment

provisions; two others had been conditionally released, but have returned to the Department of Corrections for violating the conditions of their release.

According to the fiscal year (FY) 2006 and FY2007 Pre/Post-Sentence Investigation (PSI) database, no offenders were convicted under §§ 37.2-917 or 37.2-918 during this time period.

Impact of Proposed Legislation:

State adult correctional facilities. Expanding §§ 37.2-917 and 37.2-918 may increase the state-responsible (prison) bed space needs of the Commonwealth. According to a recent report submitted to the General Assembly by the Secretary of Health and Human Resources (*Sexually Violent Predator Referral, Commitment, and Bed Utilization Forecast for 2007-2013*), the number of offenders on conditional release supervision is projected to increase to 43 by FY2013. The number of these offenders who will be convicted for absconding or failing to return cannot be estimated; therefore, the impact of the proposal on prison bed space cannot be determined.

Local adult correctional facilities. The proposal is not expected to increase local-responsible (jail) bed space needs, since sex offenders subject to civil commitment provisions who abscond from supervision or fail to return to the state following a court order will be unlikely to receive a jail sentence once convicted.

Adult community corrections programs. The proposal may increase the need for adult community corrections resources, but the magnitude and the nature of the impact cannot be determined.

Virginia's sentencing guidelines. The sentencing guidelines do not cover violations of §§ 37.2-917 or 37.2-918 as the primary (or most serious) offense in a case. A conviction under this provision, however, could augment the guidelines recommendation if the most serious offense at sentencing is a covered offense. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice, the proposal is not expected to increase juvenile correctional center bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that 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 and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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