



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1044

(Patron – Watts)

ID#: 08-4644824

Date: 12/14/2007

Topic: Application of sex offender prohibitions to out-of-state violations

Topic: Sex Offender Registry

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Programs:**
None (\$0)

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

Summary of Proposed Legislation:

The proposal amends § 9.1-902 to expand and clarify persons for whom registration or re-registration with the Sex Offender and Crimes Against Minors Registry (SOR). The penalties for providing materially false information to the Registry or failure to meet the registration or re-registration requirements are delineated in § 18.2-472.1. If any of the registrant's prior convictions is defined as a "sexually violent" offense, a first SOR violation is a Class 6 felony, while a second or subsequent violation is a Class 5 felony. If none of the registrant's prior convictions is defined as a "sexually violent" offense, a first SOR violation is a Class 1 misdemeanor, while a second or subsequent violation is a Class 6 felony.

The proposal entails moving language from clause 2 to clause 1 within subsection B, and also adding two former sections of the Code to clause 1. The language that the proposal moves within subsection B involves subsection C of § 18.2-374.3 (use of a communications system to solicit indecent liberties) and appears to be of a technical nature. One of the two additions involves former subsection D of § 18.2-374.1:1 (second or subsequent possession of child pornography); the offense was moved into subsection B of § 18.2-341.1:1 in the 2006 session of the General Assembly and currently requires compliance with the Registry requirements. The other addition involves the former clause (iv) of subsection B of § 18.2-374.3 (the use of communications systems to solicit a child for indecent liberties); the offense was redefined to eliminate the linkage to the indecent liberties statute (§ 18.2-370) by explicitly describing the behaviors used to define indecent liberties. As the crimes involved in the two former statutes still require registration, subsection F of § 9.1-902 should still require SOR registration; the subsection defines an "(o)ffense for which registration is required" to include any similar offense under the laws of any political subdivision of the United States.

The General Assembly has revisited § 9.1-902 several times in the past five 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). In the 2006 session, there was an expansion of the offenses requiring registration and

the penalties for SOR violations were increased for second violations. In the 2006 session, the offenses requiring registration were expanded and registration included most juveniles adjudicated delinquent for a Registry offense. In the 2003 session, was moved from Title 19.2 as part of the recodification of Title 9 (now Title 9.1). In addition, the 2006 session of the General Assembly restructured the § 18.2-472.1 penalties to increase the seriousness of a second or subsequent violation.

Analysis:

There were 515 felony convictions for § 18.2-472.1 found in fiscal year (FY) 2006 and 2007 Court Automated Information System (CAIS) circuit court data. Of these, 193 were for offenses committed since July 1, 2006 when the new penalty structure came into effect.¹

According to the calendar year (CY) 2005 and 2006 Local Inmate Data System (LIDS), there were 721 persons held either pre or post-trial for a conviction under § 18.2-472.1. Of these, 65 were being held for offenses committed since July 1, 2006. Of the 65, 47 involved a “sexually violent” prior conviction, while 18 did not. Of the 47 with a “sexually violent” prior conviction, 35 were convicted of a first violation (51% were sentenced to a state-responsible (prison) term with a median sentence of three years) and 12 were convicted of a subsequent violation (67% received a prison sentence with a median term of 2.8 years). The remaining 18 did not have a “sexually violent” prior record, of these 14 were convicted of the misdemeanor first offense (86% received a local-responsible (jail) sentence with a median term of four months) and four were convicted of the felony subsequent violation (none were sentenced to prison, while 75% were sentenced to jail with a median term of six months).

Impact of Proposed Legislation:

State adult correctional facilities. Although the proposal expands the list of offenses explicitly requiring registration with SOR, those offenses implicitly require such registration. Therefore, there should be no impact on the state-responsible (prison) bed space needs of the Commonwealth.

Local adult correctional facilities. Similarly, there should be no impact on the local-responsible (jail) bed space needs.

Adult community corrections resources. The number of offenders requiring adult community corrections resources is not expected to change.

Virginia’s sentencing guidelines. Changes to § 9.1-902 do not directly affect existing criminal statutes. No adjustment to the guidelines is 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. The Department of Juvenile Justice (DJJ) 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 is \$0 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.

¹ Multiple counts were consolidated into a single event. Although it is likely that there was no more serious offense at conviction, it is difficult to identify the most serious offense at this time. It is also difficult to determine whether the felony was for a first violation with a “sexually violent” prior offense or a subsequent offense. Five of the 193 were specifically identified as a subsequent offense and 79 were specifically identified as having a “sexually violent” prior offense, but that left 109 felony convictions that were not clearly identifiable.

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