



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1843

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

LD#: 09-0933520

Date: 2/5/2009

Topic: Civil commitment and conditional release of sexually violent predators

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined, likely to be small
- **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 makes several technical and procedural changes to sections of the *Code* relating to sexually violent predators and the civil commitment process, including the rights of the respondent, possession and use of records and reports, timeframes for hearings and trials, use of two-way electronic communication for proceedings, continuances, and conditional release of offenders.

The proposal modifies § 37.2-903 to expand the pool of offenders the Department of Corrections (DOC) must refer to the Commitment Review Committee (CRC) for assessment. Based on the assessment, the CRC may recommend an offender for civil commitment as a sexually violent predator after he has served his criminal sentence. Under current *Code*, sexual offenders who score five or more on the risk assessment scale known as Static-99 must be referred for assessment; DOC must also refer offenders who score four on the scale if they have been convicted of rape, forcible sodomy, or object sexual penetration of a child under the age of 13, or if they have been convicted of aggravated sexual battery of a child under the age of 13 and the victim suffered physical injury. Under the proposal, all offenders convicted of aggravated sexual battery of a child under the age of 13 who score four on the Static-99 scale must be referred for assessment, even if the victim did not suffer physical injury. This will result in additional offenders being referred for assessment by the CRC and possibly civilly committed.

The proposal also modifies one of two statutes in the *Code* that define criminal offenses applicable exclusively to persons civilly committed and those placed on conditional release under civil commitment provisions. Per §§ 37.2-917 and 37.2-918, it is a Class 6 felony for a civilly-committed person to escape from custody or for a person on conditional release to leave Virginia without permission from the court. Under the proposal, § 37.2-918 is expanded to include persons on conditional release who fail to return to Virginia in violation of a court order.

In addition, the proposal modifies §§ 16.1-69.55, 16.1-300, and 16.1-305 to extend the length of time court clerks must maintain records in sexual offense cases and to give the Office of the Attorney General access to otherwise confidential juvenile and court records.

Analysis:

According to a report submitted to the General Assembly by the Secretary of Health and Human Resources (*Sexually Violent Predator Referral, Commitment, and Bed Utilization Forecast for FY2009-2014*), the population of sexually violent predators civilly committed to the Virginia Center for Behavioral Rehabilitation (VCBR) was 81 as of July 1, 2008; another 17 individuals were under conditional release as of that date. The report states that the population of civilly-committed persons at VCBR is expected to reach 448 by FY2014.

According to the Attorney General's Sexually Violent Predators Civil Commitment Section, as of December 19, 2008, there have been 56 sexual offenders civilly committed to the VCBR during calendar year (CY) 2008. Of the 18 who have been placed under conditional release provisions in CY2008, 9 have re-offended and have returned to the Department of Corrections or local jails; an additional case was pending. Of the two offenders who were released from the custody of the VCBR during CY2008, one has re-offended. According to the Secretary of Health and Human Resources, as of July 1, 2008, no individuals on sexually violent predator conditional release had been accused or charged with a new sex crime.

It is a Class 6 felony for a civilly-committed person to escape from custody or for a person on conditional release to leave the state without permission (§§ 37.2-917 and 37.2-918). According to the Circuit Court Automated Information System (CAIS), there were no convictions under these statutes during CY2006 and CY2007.

Impact of Proposed Legislation:

State adult correctional facilities. Under the proposal, additional offenders will be referred for assessment by the CRC and, as a result, additional offenders may be civilly committed or placed on conditional release under civil commitment provisions. This, in turn, increases the pool of individuals who could escape VCBR custody or leave the state without permission and, thus, be convicted of a Class 6 felony under §§ 37.2-917 or 32.7-918. If convicted of one of these offenses, an individual would most likely be given a state-responsible (prison) sentence to serve. The number of additional felony convictions that could result from the proposal cannot be estimated. However, there were no convictions under §§ 37.2-917 or 32.7-918 during a recent two-year period. The impact of the proposal, if any, during the six-year forecast window required by § 30-19.1:4 for fiscal impact statements cannot be determined, but it is likely to be small.

Local adult correctional facilities. The proposal is unlikely to increase the local-responsible (jail) bed space needs.

Adult community corrections programs. The proposal is unlikely to increase the need for adult community corrections resources.

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 these provisions, 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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