



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1862

(Patron – Shannon)

ID#: 09-7784724

Date: 12/5/2008

Topic: Sex Offender Registry

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$505,619 (19 beds)
- **Local Adult Correctional Facilities:**
At least \$71,106 (7 beds)
- **Adult Community Corrections Programs:**
Cannot be determined

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

Summary of Proposed Legislation:

The proposal amends §§ 9.1-902 and 18.2-472.1 to increase the penalty for certain offenders who fail to register or re-register with the state's Sex Offender and Crimes against Minors Registry.

The proposal increases the penalty for the first Registry violation for offenders who are not defined as sexually violent from a Class 1 misdemeanor to a Class 6 felony (the current penalty applicable to a second or subsequent Registry violation). The penalties for sexually violent offenders who violate Registry requirements would remain unchanged (Class 6 felony for the first violation and a Class 5 felony for a second or subsequent violation).

The proposal also specifies that an offender convicted of a Registry violation who is on probation or parole for a Registry offense or a previous Registry violation shall have his probation or parole revoked. Currently, for Registry violations, § 19.2-295.2:1 requires a judge to impose post-release supervision and GPS tracking.

Under § 9.1-902, the proposal clarifies that existing and former laws in other jurisdictions can be the basis for requiring registration in Virginia.

The General Assembly has revisited § 9.1-902 several times in recent 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). During the 2006 session, there was an expansion of the offenses requiring registration and the penalties for second or subsequent Registry violations were increased. The 2005 and 2008 General Assemblies also expanded the offenses requiring registration. Since July 1, 2005, judges have had the authority to require juveniles adjudicated of specified crimes to register as a sex offender if the juvenile was age 14 or older when the offense was committed.

Analysis:

The Court Automated Information System (CAIS) contains the most recent misdemeanor data reflecting the new penalties that became effective on July 1, 2006. Between July 1, 2006, and December 31,

2007, there were 247 offenders convicted of a Class 1 misdemeanor violation under §18.2-472.1. The majority of these offenders (61%) were given no active term of incarceration. The remaining 39% were given a local-responsible (jail) term with a median sentence of three months. Of the total, six offenders could be identified as having received the current maximum penalty of 12 months for this offense. Under the proposal, offenders convicted of this Class 1 misdemeanor would be guilty of a Class 6 felony.

According to the Department of Corrections' Division of Community Corrections, 2,754 registered sex offenders were under probation or parole supervision at the close of FY2008. Under the proposal, an offender convicted of a Registry violation who is on probation or parole for a Registry offense or a previous Registry violation must have his probation or parole revoked. According to CAIS, there were a total of 377 convictions for Registry violations in CY2007. While the exact figure is not known, a large proportion of offenders convicted of Registry violations may be subject to the mandatory revocation of probation or parole specified in the proposal and could be given a state-responsible (prison) sentence. As an example, 31% of technical probation violators (e.g., violators not convicted of a new crime) are given a prison sentence to serve (median sentence of 21 months).

Impact of Proposed Legislation:

State adult correctional facilities. There are two elements to the proposal that are expected to increase the demand for state-responsible (prison) beds. First, requiring the revocation of an offender's probation or parole as specified in the proposal could result in additional commitments to prison or additional sentences to be served; this element cannot be quantified. Second, increasing the penalty for the first Registry violation for offenders not defined as sexually violent could result in the need for additional prison beds; this element is the basis of the estimated impact. The impact of this aspect of the proposal is estimated to be 19 beds by FY2015. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$505,619.

Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY10	FY11	FY12	FY13	FY14	FY15
10	16	18	18	18	19

Local adult correctional facilities. The proposal is expected to result in an increase in the need for local-responsible (jail) beds. The impact is estimated to be a net increase statewide of at least seven beds by FY2015 (state cost: \$71,106; local cost: \$73,433).

Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY10	FY11	FY12	FY13	FY14	FY15
6	7	7	7	6	7

Adult community corrections resources. Raising a crime from a Class 1 misdemeanor to a Class 6 felony may decrease the demand for local community-based probation services and increase the need for state community corrections resources. The *Code of Virginia*, however, allows judges to utilize local community-based probation programs for Class 5 and Class 6 felons as well as misdemeanants. The proposal could also result in felony convictions and subsequent supervision requirements for an additional number of offenders. Data are not available to estimate the proposal's impact on local or state community corrections resources.

Virginia's sentencing guidelines. The guidelines do not cover convictions under § 18.2-472.1 when this crime is the primary (most serious) offense in the case. A conviction, however, could augment the guidelines recommendation as an additional offense if the most serious offense at sentencing is covered by the guidelines. No adjustment to the sentencing guidelines would be necessary under the proposal.

Juvenile correctional centers. By increasing the penalty for certain Registry violations from a Class 1 misdemeanor to a Class 6 felony, the proposal could result in additional commitments to DJJ. Existing *Code* specifies that a juvenile is eligible for commitment if he is adjudicated for a felony, has a prior felony adjudication, or has accumulated a total of four Class 1 misdemeanor adjudications. If a juvenile is committed to DJJ for a Class 6 felony, the minimum stay under the Department's Length of Stay (LOS) Guidelines is six months. According to DJJ, the impact of the proposal on the Department cannot be quantified.

Juvenile detention facilities. The Department of Juvenile Justice reports that the impact on the bed space needs of juvenile detention facilities cannot be quantified.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$505,619 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety's Committee on Inmate Forecasting in 2008.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety's Committee on Inmate Forecasting and approved in July 2008.
3. Cost per prison bed was assumed to be \$27,294 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*
4. Cost per jail bed was based on The Compensation Board's FY2007 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.77 per day or \$10,509 per year. The local cost was calculated by using the daily expenditure cost of \$62.56 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$29.71 per day or \$10,853 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2009, is phased in to account for case processing time.
2. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2007. For sex offense crimes, this rate was 12.13%.
3. To gauge the impact of proposed penalty structure, it was assumed that the distribution of sentences for offenders affected by the proposal will be similar to the distribution of sentences for offenders convicted of a Class 6 felony for a second or subsequent Registry violation under the current provisions of § 18.2-472.1(A).

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