



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 1208

(Patron – Obenshain)

LD #: 11101092

Date: 1/21/2011

Topic: Sex Offender Registry

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$2,069 (less than one bed)
- **Local Adult Correctional Facilities:**  
\$1,757 (less than one bed)
- **Adult Community Corrections Programs:**  
Negligible

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

#### Summary of Proposed Legislation:

The proposal adds § 9.1-923 to the *Code of Virginia* to clarify that any provision of a court order or plea agreement stating that a person is not required to register with the Sex Offender and Crimes Against Minors Registry is invalid if it is in conflict with the registration requirements specified in Chapter 9 of Title 9.1.

There are provisions in existing *Code* under which registration requirements can be modified for individual offenders. Under § 9.1-910, a person who is required to register but has not been convicted of a sexually violent offense, two or more registry offenses, marital sexual assault under former § 18.2-67.2:1, or murder may petition the court for removal of his name and identifying information from the Registry after a certain amount of time has passed and after he has completed all treatment and financial obligations. Offenders who have been convicted of a sexually violent offense, murder, or marital sexual assault under former § 18.2-67.2:1 must reregister for life. The duty to reregister may be modified under § 9.1-909, which allows the court to change the frequency of reregistration under certain conditions as long as an offender no longer poses a menace to the health and safety of others and is incapable of reregistering due to a physical condition.

The General Assembly has revisited various sections in Chapter 9 of Title 9.1 (Sex Offender and Crimes Against Minors Registry Act) since enactment in 2003. Most recently, the 2010 General Assembly required registrants who do not have a physical address to designate a location where he resides or habitually locates himself. In the 2008 session, the crimes requiring registration were restructured. During the 2007 session, the information required of registrants was expanded and the list of crimes requiring registration was expanded and reorganized. In 2006, the General Assembly added to the list of offenses requiring registration and increased the penalties for second Registry violations. In addition, the *Code* was changed to allow Juvenile and Domestic Relations courts to require a juvenile who has been adjudicated delinquent for a Registry offense to register.

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**Analysis:**

The Virginia State Police estimate that they have been precluded from registering, at most, 50 offenders because of court orders stating that the offender is exempt from registration requirements.

The State Police report that, as of January 21, 2011, 17,712 offenders were listed on the Sex Offender Registry. Of these, 14,684 offenders (83%) were defined as sexually violent offenders per § 9.1-902, while the remaining 3,028 (17%) were not defined as sexually violent.

Sentencing information is available for offenders convicted of Registry violations under current law. The General District Court Automated Information System (CAIS) contains the most recent data for misdemeanor violations related to failing to register or reregister as required or providing false information to the Registry. In fiscal year (FY) 2009 and FY2010, 387 offenders who were not defined as sexually violent were convicted of a misdemeanor for a first-time Registry violation (as the most serious offense). Of these offenders, 47% did not receive an active term of incarceration. The median sentence length for the 53% who were given a local-responsible (jail) term was 2.0 months.

According to the Circuit Court CAIS database for FY2008 and FY2009, there were 829 felony convictions for a Registry violation under § 18.2-472.1 during this time period. For 646 of these offenders, the Registry violation was the most serious offense at sentencing. While nearly half (45%) of these offenders received a local-responsible (jail) sentence (with a median sentence of 6 months), 34% received no active term of incarceration. For the remaining 21% of offenders who were given a state-responsible (prison) term, the median sentence was 1.0 year.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposal clarifies that provisions in court orders and plea agreements are invalid if they are in conflict with registration requirements specified in Chapter 9 of Title 9.1. Under the proposal, individuals with such court orders would be added to the Sex Offender Registry. By expanding the number of individuals on the Registry, the proposal may result in additional convictions for violations of Registry provisions. In this way, the proposal could increase the state-responsible (prison) bed space needs of the Commonwealth. If 50 offenders are added to the Registry (based on State Police estimates) and these offenders are convicted of Registry violations at the same rate as persons currently on the Sex Offender Registry, the impact of the proposal is estimated to be less than one prison bed by FY2017. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$2,069.

**Local adult correctional facilities.** Similarly, the proposal is expected to increase the need for local-responsible (jail) beds. The impact is estimated to be less than one jail bed by FY2017 (state costs: \$1,757; local costs: \$2,786).

**Adult community corrections programs.** Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Any impact, however, is likely to be negligible.

**Virginia's sentencing guidelines.** Convictions under § 18.2-472.1 are not covered by the current sentencing guidelines as the primary (most serious) offense in a case. Such a conviction, however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be 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.** According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase the bed space needs of juvenile detention facilities.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$2,069 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.**

**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 2010.
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 2010.
3. Cost per prison bed was assumed to be \$27,065 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 FY2009 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.86 per day or \$10,541 per year. The local cost was calculated by using the daily expenditure cost of \$87.30 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 \$45.75 per day or \$16,712 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 offenders**

1. The Virginia State Police estimate that they have been precluded from registering, at most, 50 offenders because of court orders stating that the offender is exempt from registration requirements. It was assumed that 50 offenders would be added to the Sex Offender Registry under the proposal. Based on the population of offenders who are currently registered, it was assumed that 83% of these 50 offenders would be defined as sexually violent per § 9.1-902 and the remaining 17% would not be defined as sexually violent.
2. The number of additional convictions for Registry violations resulting from the proposal was estimated based on the rate at which offenders have been convicted for Registry violations under current law (§ 18.2-472.1). According to the Virginia State Police, of the 17,712 offenders on the Sex Offender Registry as of January 21, 2011, 14,684 (83%) were defined as sexually violent offenders per § 9.1-902 and 3,028 (17%) were not defined as sexually violent. During a recent two-year period, there were 393 felony convictions among sexually violent offenders for a first-time Registry violation; therefore, first-time Registry violations among sexually violent offenders resulted in approximately 197 convictions per year [393/2]. This is a rate of 1.3% [197/14,684]. It was assumed that sexually violent offenders added to the Registry under the proposal would be convicted of Registry violations at this same rate. During the same two-year period, there were 387 misdemeanor convictions among non-sexually violent offenders for a first-time Registry violation; first-time Registry violations among non-sexually violent offenders resulted in approximately 194 convictions per year [387/2]. This is a rate of 6.4% [194/3,028]. It was assumed that non-sexually violent offenders added to the Registry under the proposal would be convicted of Registry violations at this same rate.

**Assumptions relating to sentence lengths**

1. The impact of the proposed legislation, which would be effective on July 1, 2011, is phased in to account for case processing time.
2. It was assumed that the distribution of sentences for the affected cases will be similar to the distribution of sentences for a first-time Registry violation (§ 18.2-472.1) under existing provisions.
3. 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, 2009. For sex offenses, this rate was 10.3%.