



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 750

(Patron – Cline)

LD #: 12100320

Date: 1/20/2012

Topic: Deferred disposition in criminal cases

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 890 of the 2011 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal adds § 19.2-298.02 to the *Code of Virginia* to limit the authority of a court to defer a proceeding, defer entry of a final order, or dismiss a case after certain conditions are met. After a plea of guilty or nolo contendere or after a plea of not guilty and the facts found by the court support a finding of guilty, the court would only be able to defer a disposition or dismiss a criminal case if explicitly authorized by statute. The proposal also prohibits the deferral of a final order of guilt for more than 60 days after the conclusion of evidence in all cases. The following statutes currently authorize a court to defer and/or dismiss a criminal case:

- § 4.1-305 – Purchasing or possessing alcoholic beverages
- § 16.1-278.8 – Delinquent juveniles
- § 16.1-278.9 – Delinquent juveniles; loss of driving privileges for alcohol, firearm, and drug offenses
- § 18.2-57.3 – First offense assault and battery against a family or household member
- § 18.2-61 – Spousal rape
- § 18.2-67.1 – Spousal sodomy
- § 18.2-67.2 – Spousal object sexual penetration
- § 18.2-251 – First offender drug possession
- § 18.2-258.1 – Prescription fraud
- § 19.2-303.2 – First offender misdemeanor property offense

The proposal is a response to a Supreme Court of Virginia opinion issued on January 13, 2011, in the *Hernandez v. Commonwealth* case. The issue in the Hernandez case related to deferring disposition after evidence was presented. Defense counsel for Hernandez moved the court to defer disposition of the case for a fixed period of time and to consider dismissal of the case after certain conditions were met. The circuit court judge ruled that the court did not have the “inherent authority” to defer a disposition. The Supreme Court of Virginia disagreed. In the opinion, the Supreme Court of Virginia concluded that “the circuit court had the inherent power, in the exercise of its discretion, to take the matter under advisement

and to continue the case for future disposition, subject to such lawful conditions as the court might prescribe.”

Currently, offenders who are the subject of a deferred proceeding often must satisfy certain conditions before charges are reduced or dismissed. For example, first offense drug offenders are required by § 18.2-251 to: (i) successfully complete treatment or education programs or services, (ii) remain drug and alcohol free during the period of probation and submit to drug and alcohol tests during that period, (iii) make reasonable efforts to secure and maintain employment, and (iv) comply with a plan of at least 100 hours of community service for a felony and up to 24 hours of community service for a misdemeanor.

Analysis:

According to the Sentencing Guidelines Database (SG) for fiscal year (FY) 2010 and FY2011, there were at least 1,337 offenders who received a deferred disposition as permitted under §§ 18.2-251 or 18.2-258.1 (first offender drug possession or prescription fraud). The majority (67%) of offenders were placed on state supervised probation. The median length of time on supervised probation was 12 months. At the end of the average 12-month deferral period, charges were dismissed if the defendant successfully complied with the conditions set by the court. The other 33% of offenders were under either local probation supervision or good behavior for an undeterminable amount of time.

The number of deferred dispositions in other felony or misdemeanor cases is not readily available.

Impact of Proposed Legislation:

State adult correctional facilities. Under the proposal, judges would be prohibited from deferring disposition or dismissing charges unless explicitly authorized by statute. The proposal is not expected to have an immediate impact on the need for state-responsible (prison) beds. Offenders who, in the past, had a disposition deferred and a charge dismissed would be convicted of those crimes under the proposal; in such circumstances, however, a judge who otherwise would have deferred proceedings will not likely sentence that offender to an active term of incarceration if the offender is convicted of the charge.

Nonetheless, to the extent that it would result in additional felony convictions, rather than dismissal of charges, the proposal may increase prison bed space needs due to its impact on an offender’s criminal record for any future proceeding, as described below.

In 1994, the General Assembly adopted legislation to abolish parole and implement truth-in-sentencing for felony offenses committed on or after January 1, 1995. The legislation adopted in 1994 included provisions for a system of discretionary sentencing guidelines to be used by judges in Virginia’s circuit courts. While compliance with the guidelines is discretionary, the guidelines must be prepared and submitted to the court and reviewed by the judge prior to sentencing. To prepare the guidelines, the offender’s current offenses and his prior record of adult convictions and juvenile adjudications are scored. An offender who, in the past, had a disposition deferred and the charge dismissed would, under the proposal, have a conviction for that charge in his criminal record. For any subsequent criminal proceeding, that additional conviction in his record would likely result in a longer sentence recommendation on the guidelines. In particular, prior convictions or adjudications for crimes defined as violent under § 17.1-805 (which includes burglary) will significantly increase an offender’s sentence recommendation. Since FY2003, circuit court judges have complied with the guidelines recommendations in approximately 80% of the felony cases they hear.

While the proposal may increase the need for prison beds in the future, the magnitude of the impact cannot be quantified.

Local adult correctional facilities. Similarly, the proposal could increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal limits deferrals to two months, there may be reductions in the length of supervision for offenders who are subject to deferrals under existing statutes. The proposal's impact on adult community corrections programs cannot be determined.

Virginia's sentencing 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. 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; therefore, Chapter 890 of the 2011 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

defer01_0320