



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 511

(Patron – Morris)

LD #: 14100674

Date: 1/7/2014

Topic: Deferred dispositions for juvenile offenders

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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 806 of the 2013 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends § 16.1-278.8 of the *Code of Virginia* to limit the authority of a juvenile or circuit court judge to defer disposition in certain cases relating to juveniles. Specifically, the court would not be able to defer the disposition for a juvenile for a juvenile charged with certain offenses without the concurrence of the attorney for the Commonwealth. The proposed provision applies to cases of: capital, first-degree, second-degree and felony murder, lynching, aggravated malicious wounding, malicious wounding of a law-enforcement officer, malicious wounding, felonious injury by mob, abduction, felonious poisoning, adulteration of products, robbery, carjacking, rape, forcible sodomy, object sexual penetration, street gang participation and recruitment of person for a street gang. The proposal also applies to juveniles who have been previously adjudicated delinquent on two or more occasions of violating: § 18.2-248, manufacturing, distributing, etc., a controlled substance or an imitation controlled substance, § 18.2-248.03, manufacturing, distributing, etc., methamphetamine or § 18.2-248.5, manufacturing, distributing, etc., anabolic steroids.

The proposal may be related 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. In addition, subsections 4, 4a, and 5 of § 16.1-278.8, allows the court to defer dispositions for juveniles with certain caveats.

Analysis:

Data sources available to the Commission do not contain sufficient detail to determine the number of cases that would be affected by the proposal.

Impact of Proposed Legislation:

State adult correctional facilities. Under the proposal, juvenile and circuit court judges would be prohibited from deferring dispositions for certain offenses committed by a juvenile without the concurrence of the attorney for the Commonwealth. 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 may 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 were convicted of the charge. Nonetheless, to the extent that it would result in additional felony convictions or juvenile adjudications, 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 or adjudication 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 many of the offenses listed in this proposal) 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. The proposal's impact on the need for adult community corrections resources cannot be determined.

Virginia's sentencing guidelines. No adjustment to the sentencing guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

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 806 of the 2013 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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