

## Department of Planning and Budget 2020 Fiscal Impact Statement

**1. Bill Number:** SB809

<b>House of Origin</b>	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
<b>Second House</b>	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

**2. Patron:** Morrissey

**3. Committee:** Committee on the Judiciary

**4. Title:** Parole; application of statutes.

**5. Summary:** The proposed legislation repeals §53.1-165.1 (limitation on the application of parole statutes). The bill also requires the Virginia Parole Board (VPB) to establish procedures for consideration of parole for prisoners previously ineligible for parole under §53.1-165.1 consistent with current practice under which the VPB reviews cases, allowing for an extension of time for reasonable cause.

**6. Budget Amendment Necessary:** Yes. Item 402 and Item 429.

**7. Fiscal Impact Estimates:** Preliminary. See Item 8 below.

**8. Fiscal Implications:** The 1994 General Assembly Special Session II abolished discretionary parole release for felony offenses committed on or after January 1, 1995. Additionally, the system of sentence credits awarded to inmates for good behavior was eliminated. Under Virginia law, convicted felons must serve at least 85% of their sentence in a state and/or local correctional facility and they may earn 15% off in sentence credits. This bill repeals the current law and it also would allow for discretionary parole release for those offenders who were previously ineligible for parole.

According to data provided by the Department of Corrections (DOC), this bill would affect 16,787 state-responsible prisoners, which is approximately 54 percent of the current state-responsible offender population. This includes approximately 7,000 state-responsible offenders currently housed in local jails. If eligible, these offenders would be moved from the jails into a DOC facility, once beds are available, in order to receive re-entry programming as currently required by the VPB. The Commonwealth currently pays localities \$12.00 a day for each state-responsible offender held in a jail. Therefore, the amount paid to jails for such offenders would be reduced to the extent that, and the rate at which, such offenders are moved to DOC facilities.

The remainder of the state-responsible offender population would not be immediately eligible for discretionary parole consideration because they would not have met the eligibility criteria yet under the provisions of §53.1-151 (eligibility for parole). Specifically, first time offenders would be required to serve 25% of their sentence or 12 years, whichever is the less. Similarly, second time offenders would be required to serve 33% or 13 years, third time

offenders would be required to serve 50% or 14 years and fourth or subsequent time offenders would be required to serve 75% or 15 years prior to eligibility.

Those sentenced to life for the first time would be required to serve 15 years prior to eligibility unless convicted of a Class 1 felony or first degree murder of a child under the age of eight in which case they would be required to serve 25 years prior to eligibility. Those with second time life sentences (after being released from the first) are not eligible for parole. Offenders with three separate felony convictions are not eligible for parole. However, the VPB may choose to review those offenders. Offenders with multiple life sentences are required to serve 30 years prior to eligibility except those with Class 1 felonies and those with three felony convictions.

In FY 2019, the DOC spent an average of \$32,146 per offender. As prisoners are granted parole, the agency expects savings as they are released from DOC facilities. Any anticipated savings as a result of this bill will ultimately depend on the procedures established by the VPB, the rate at which offenders are reviewed, and, for any who are granted parole, the rate at which they are released. Additionally, the agency expects that once granted parole, those released would require supervision by parole officers, resulting in additional need for resources to expand services and programs in various probation and parole districts depending on the workload. Currently, the type of supervision is categorized by distinct levels of supervision that correspond with an offender's treatment plan. The agency would need to hire and train additional probation and parole officers, release planning coordinator position, additional mental health and substance abuse services for community release, and staff to compute time to assist the VPB. Capital funding may also be needed for additional parole office space, depending on the number of parole officers hired.

Currently, the DOC spends an average of \$3,920 annually for each offender who participates in re-entry programs. These programs are offered to offenders who are within 12 months of their release date to minimize recidivism rates and enhance public safety before offenders return to their community. The DOC also expects costs for re-entry services to increase as the number of offenders who are to be released grows and would need to adjust its programmatic policies to provide the required services to include release plans for each prisoner. The agency has not conducted a complete assessment of the additional re-entry funding it might be necessary because the implementation of the bill depends on the procedures established and adopted by the VPB.

Prisoners who were incarcerated for sexually violent offenses and eligible for parole under the bill could also be subject to the Civil Commitment of Sexually Violent Predators (SVP) Act (§ 37.2-900 et seq.). The SVP Act applies to prisoners in the DOC who are incarcerated for sexually violent offenses who are nearing their release date. According to the Department of Behavioral Health and Developmental Services (DBHDS), although the number of sex-offenders who would be eligible for parole is not known at this time, it could affect the SVP population if sex-offenders are transferred to a civil commit at faster rates than they are under current law. This would have an impact on the costs of operating these facilities; however, the immediate impact cannot be determined at this time.

The VPB reports that parole examiners currently perform a maximum of five interviews per day. Based on this average, the VPB estimates that there may be an immediate need for an additional 14 full-time parole examiners, paid an average of \$89,472 per year, and 23 part-time parole examiners, paid an average of \$39,023 per year, to handle the review of all newly eligible offenders. Depending upon the review procedures that are established, the VPB reports that it may need to expand parole examiner staff even further in the future. The VPB also estimates the need for five post-release supervisors, paid an average of \$69,054 per year, to monitor parole violations and one psychologist, paid an estimated \$103,499 per year, to perform evaluations that are required by law. Finally, the VPB estimates that it may need up to five additional support staff, paid an average of \$63,286 per year. The VPB also believes that two additional members may be needed to the VPB at a cost of \$165,601 for each position to assist with the expected workload as a result of this legislation. The introduced budget (HB30/SB30) provided (Item 429) funding for a part-time release planning coordinator position, and seven part-time investigators.

This bill also will require changes to the Virginia Corrections Information System (VACORIS), which DOC uses to track offender data including parole eligibility status. DOC reports that the process to make the required changes, which would have to begin as soon as the bill became law, may cost up to \$375,000 in FY2021 and \$1.1 million in FY 2022.

Parole violators would temporarily be held in local jails; however, the impact that re-incarcerating parole violators may have on local correctional facilities would be offset by the number of state-responsible offenders that would be transferred to DOC for re-entry services before paroled as required by the VPB. The Commonwealth currently pays localities \$4.00 a day for each local-responsible prisoner held in a jail and \$12.00 a day for each state-responsible prisoner. It also funds a considerable portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. According to the Compensation Board's most recent Jail Cost Report (November 2019), the estimated total state support for local jails averaged \$34.07 per inmate, per day in FY 2018.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Corrections; Virginia Parole Board, Local Correctional facilities, Compensation Board, Department of Behavioral Health and Developmental Services, Courts, Virginia Criminal Sentencing Commission, and Courts

- 10. Technical Amendment Necessary:** None

- 11. Other Comments:** Because the impact on judicial sentencing practices is unknown, the net impact on the time served by state-responsible prisoners cannot be determined at this time. If parole is re-instituted, the Virginia Sentencing Guidelines would likely be suspended as the guidelines would no longer present an accurate benchmark of the typical, or average, sentencing outcome and, therefore, would become immaterial in their current form.