

Department of Planning and Budget

2021 Fiscal Impact Statement

1. Bill Number: SB1370

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Edwards

3. Committee: Rehabilitation and Social Services

4. Title: Application of parole statutes for juveniles and persons committed upon felony offenses.

5. Summary: This bill amends the application of parole statutes in the following ways:

- The bill repeals the abolition of parole, making any person sentenced to a term of incarceration for a felony offense committed on or after January 1, 1995, eligible for parole upon that offense.
- The bill requires the Virginia Parole Board (VPB) to establish procedures for consideration of parole of who were sentenced to a term of incarceration for a felony offense committed on or after January 1, 1995, consistent with the provisions of § 53.1-154 (establishes times at which Virginia Parole Board reviews cases).
- The bill requires that any person who meets eligibility criteria for parole and was sentenced by a jury prior to June 9, 2000, for any felony offense committed on or after January 1, 1995, and who remained incarcerated for such offense on July 1, 2020, must be scheduled for a parole interview no later than July 1, 2021, allowing for extension of time for reasonable cause.
- The bill makes any person sentenced to a term of life imprisonment for a single felony or multiple felonies committed while the person was a juvenile and who has served at least 20 years of such sentence eligible for parole and any person who has active sentences that total more than 20 years for a single felony or multiple felonies committed while the person was a juvenile and who has served at least 20 years of such sentences eligible for parole.

6. Budget Amendment Necessary: Yes, Items 57, 402 and 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 17,740 state-responsible prisoners, which is approximately 56 percent of the current state responsible inmate population. This includes approximately 7,500 state-responsible inmates currently housed in local jails. If eligible, these state responsible inmates 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 before they are released. The Commonwealth currently pays localities \$12.00 a day for each state-responsible inmate held in a jail. Therefore, the amount paid to jails for such inmates would be reduced to the extent that, and the rate at which, such inmates are moved to DOC facilities.

The remainder of the state-responsible inmate 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 inmates would be required to serve 25% of their sentence or 12 years, whichever is the less. Similarly, second time inmates would be required to serve 33% or 13 years, third time inmates would be required to serve 50% or 14 years and fourth or subsequent time inmates would be required to serve 75% or 15 years prior to eligibility.

Additionally, pursuant to §53.1-151 (Eligibility for parole), 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. Inmates with three separate felony convictions are not eligible for parole. However, the VPB may choose to review those inmates. Inmates 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.

According to DOC's calculation, in FY 2020, the DOC spent an average of \$33,994 per inmate housed in a DOC facility. 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 inmates are reviewed, and, for any who are granted parole, the rate at which they are released. However, this bill could have the effect of reducing the number of DOC staff required to operate prisons by approximately half, assuming the release of all 17,740 inmates. Savings resulting from releasing prisoners would also be offset by costs including costs incurred for supervising offenders after their release, costs for re-entry programming, costs for changes to the Virginia Department of Corrections Information System (CORIS) system, and costs for additional personnel at the VPB.

DOC 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 resulting workloads. Currently, the type of supervision is categorized by distinct levels of supervision that correspond with an offender's treatment plan. The overall supervision ratio is 70 offenders to one probation/parole officer. Depending on the number of inmates actually released and the timing of the releases, the

agency would need to hire and train additional probation and parole officers, release planning coordinators, additional mental health and substance abuse service providers for community release, and staff to compute time to assist the VPB. However, it is possible that DOC could reallocate staff no longer needed to operate prisons to fill at least some of the positions to support post-release supervision programs. 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 inmate who participates in re-entry programs. These programs are offered to inmates 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 inmates 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 civil commitments 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 Virginia Parole Board (VPB) reports that additional personnel would be required to manage the workload increase resulting from this bill. 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 either an additional 15 full-time parole examiners, paid an average of \$90,183 per year, or an additional 25 part time parole examiners, paid an average of \$39,185 per year, to handle the review of all newly eligible offenders. The VPB estimates that after the initial 17,740 offender cases are reviewed, the number of examiners needed may decrease to either two full-time positions or three part-time positions, depending on the review procedures established by the Board and the number of offenders eligible for review. The VPB also estimates the need for five post-release supervisors, paid an average of \$73,583 per year, to monitor parole violations, and up to five additional support staff, paid an average of \$63,642 per year. The VPB also believes that this proposal would require the addition of two full-time Board members, at an estimated cost of \$163,730 per position and the conversion of two part-time Board members to full-time status, which would require an additional \$99,669 for each position. The total first-year cost for additional personnel identified by VPB is \$2.6 million if full-time examiners are hired and \$2.2 million if part-time examiners are hired. These costs would change from year to year as the workload at VPB changes.

This bill will also 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 and are expected to take two years to complete, may cost up to \$375,000 in FY 2022 and \$1.1 million in FY 2023 with implementation achievable no sooner than January 1, 2023.

Parole violators would temporarily be held in local jails. According to the 2020 Offender Population Forecast Report, 2,452 offenders are expected to be re-incarcerated as technical probation violators in FY 2022. On average, the group of inmates is approximately 6 percent of the adult state-responsible inmate population. However, the impact that re-incarcerating parole violators may have on local correctional facilities would be offset by the number of state-responsible inmates 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. However, according to the Compensation Board's most recent Jail Cost Report (November 2020), the estimated total state support for local jails averaged \$34.59 per inmate, per day in FY 2019.

The Attorney General's Office (OAG) expects a significant amount of advice requests and litigation to be associated with the proposed legislation, which would require a minimum of four new attorney positions. Correctional Litigation already operates at high capacity with attorneys averaging 70-80 cases each, which also increases demand on support staff. At a minimum the OAG estimates the need for two new paralegals and two new administrative staff to address the workload presented by the proposed legislation. The OAG estimates the annual cost for four attorneys, two paralegals, and two secretaries at \$916,437. Costs for these positions would be prorated in FY 2021 to the extent that agency would need to hire and train them before this proposal takes effect.

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, Attorney General's Office

10. Technical Amendment Necessary: None

11. Other Comments: The DOC estimates that, due to the complexity in changes required to CORIS and the volume of potential offender cases to review, it would need two years to implement this legislation.