Department of Planning and Budget
2023 Fiscal Impact Statement

1. **Bill Number:** HB1914

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

2. **Patron:** Hope

3. **Committee:** Public Safety

4. **Title:** Department of Corrections; operations and costs.

5. **Summary:** Current law requires the Virginia Criminal Sentencing Commission (VCSC) to prepare a fiscal impact statement reflecting the operating costs attributable to and appropriations required for any bill that would result in a net increase in periods of imprisonment in state adult correctional facilities. The Department of Planning and Budget (DPB) is required to provide VCSC with the operating cost per inmate annually. For each law enacted that results in a net increase in periods of imprisonment in state correctional facilities, current law requires that a one-year appropriation must be made from the general fund equal to the estimated increase in operating costs of such law, in current dollars, of the highest of the next six fiscal years following the effective date of the law. The law defines operating costs as all costs other than capital outlay costs.

   This bill establishes a specific formula for determining the estimated appropriations needed for any bill that adds a new felony for which imprisonment or commitment is authorized.

   The bill also provides that the cost of goods and services sold in stores in state correctional facilities cannot exceed 10 percent of the cost of the typical market rate for such goods and services in major retail stores that are not affiliated with any correctional facility and that the Department of Corrections (DOC) cannot receive any commissions or markups from the goods and services sold.

6. **Budget Amendment Necessary**: Indeterminate

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

8. **Fiscal Implications:**

   <u>Calculation of Fiscal Impact Statements</u>

   This bill would affect the amount of funding appropriated for bills that are projected to increase the number of people incarcerated in prisons. Funding for such bills is appropriated in the Department of Corrections' budget, pursuant to Corrections Special Reserve Fund, established pursuant to § 30-19.1:4.

Under this proposal, for any bill that adds a new felony for which imprisonment or commitment is authorized, the estimated appropriation reflected in the fiscal impact statement must be determined by multiplying twice the department-wide per capita cost of housing inmates, as reported in the Virginia Department of Corrections' Annual Management Information Summary Report published in that fiscal year previous to the General Assembly session for which such bill has been filed, by the estimated increase in persons convicted of and imprisoned for the new felony. The bill specifies that the estimated increase in inmates must be calculated using a fraction of the numerator of which is 1 and the denominator of which is "n" multiplied by "t", where "n" equals the total number of felonies codified within the relevant class and "t" equals the total number of persons convicted of and imprisoned for any felony within the relevant class during the fiscal year previous to the General Assembly session for which such bill has been filed.

It is expected the new calculation would generate a higher cost per bed than the current calculation. For example, for the 2023 General Assembly session, VCSC bases its estimates on a cost per bed of $48,958, as calculated by DPB. To generate the cost per bed, DPB takes the total general fund expenditures incurred by the Department of Corrections in the previous fiscal year for secure prison operations, inmate medical, academic and vocational education, and appropriate central office activities (no capital expenditures are included) and divides this by the total average daily population (ADP) in Department of Corrections (DOC) facilities for the same year. The department-wide per capita cost of housing inmates reported in DOC's FY 2022 Annual Management Information Summary Report is $42,432 (includes all types of facilities). Twice this amount is $84,864. For purposes of illustration, using the current calculation, a bill that is expected to increase the need for prison beds by 10 inmates would require a $490,000 appropriation; using twice the DOC department-wide per capita operating cost would require an $850,000 appropriation.

According to VCSC, changing the way the number of offenses is determined would also affect the total appropriation needed, though the impact is unknown. Currently, a VCSC analysis is based on the specific offense(s) affected by the bill and the number of individuals convicted and sentenced to prison for those unique offenses or, for new proposed felonies, the VCSC's impact statement includes information regarding existing offenses most similar to the offense defined in the bill. Under the proposed bill, the approach is generic, without regard to the specific nature of the offense.

Additionally, the bill limits the analysis to one year of data, which may not be sufficient to generate an accurate estimate. VCSC conducts analyses using a minimum of two years of data (and sometimes up to six years) in its analyses to ensure the estimations are not overly affected by any unusual fluctuations from year to year.

Language in the appropriation act (Item 52 A. of HB1400/SB800) requires that for any fiscal impact statement prepared by the VCSC pursuant to § 30-19.1:4, Code of Virginia, for which there is not sufficient information to project the impact, VCSC must assign a minimum fiscal impact of $50,000 to the bill. It is not clear if this language conflicts with the proposed bill.

Goods and Services Sold in State Correction Facility Stores and Commissaries

Current law authorizes the establishment and operation of stores or commissaries in state correctional facilities to deal in such articles as the Director of DOC deems proper. The profits from the operation of such stores may be used for educational, recreational, prerelease and post-release reentry and transition services, or other purposes beneficial to the inmate population as may be prescribed by the Director.

This bill requires that the cost of items or services sold by such stores or commissaries, including the sale or rental of electronic devices or media, must not exceed 10 percent of the cost of the typical market rate for such goods and services in major retail stores that are not affiliated with any correctional facility. Although the bill still permits DOC from using profits to support the activities noted above, the bill prohibits DOC from receiving any commissions or markups from the products or services sold. The bill does not clearly distinguish the difference between the terms “profits” and “commissions.” DOC reports that commissary operations are contracted with a vendor that provides all management, staffing, and materials for operating on-site store, on-site delivery, off-site bag delivery or a combination of these services to DOC facilities statewide. DOC reports that it receives a commission equal to 9.5 percent of commissary sales under the terms of the contract, which is used exclusively to support inmate welfare programs such as the law library, chaplain services, cable TV, and recreational supplies. DOC reports that commissions received from FY 2022 sales totaled $4.0 million. If DOC were prohibited from collecting such commissions, this funding would need to be replaced in order to continue supporting inmate activities.

9. Specific Agency or Political Subdivisions Affected: Virginia Criminal Sentencing Commission, Department of Planning and Budget, Department of Corrections

10. Technical Amendment Necessary: No

11. Other Comments: None