

Department of Planning and Budget 2023 Fiscal Impact Statement

1. Bill Number: HB1931

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Durant

3. Committee: Courts of Justice

4. Title: Civil commitment of sexually violent predators; penalty.

5. Summary: This bill creates a Class 6 felony for any civilly committed sexually violent predator who tampers with or in any way attempts to circumvent the operation of his GPS equipment while on conditional release. The bill also eliminates the requirement that an expert witness be designated by the Commissioner of Behavioral Health and Developmental Services prior to being permitted to testify at a probable cause hearing.

6. Budget Amendment Necessary: The amended 2022-2024 budget (HB1400/SB800) contains \$50,000 in Item 404 T to account for legislation that creates a Class 6 felony penalty for sexually violent predators who abscond.

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

8. Fiscal Implications: The Department of Behavioral Health and Developmental Services (DBHDS) reports that the agency would still have to designate an expert to perform an evaluation as a part of its Commitment Review Committee (CRC) responsibilities when assessing prisoners or defendants for commitment as sexually violent predators under § 37.2-904 (CRC assessment of prisoners or defendants eligible for commitment as sexually violent predators; mental health examination; recommendation). Therefore, the provision of the bill that eliminates the designation of an expert witness for purposes of a probable cause hearing is not expected to have a fiscal impact on agency operations.

Currently, under § 37.2-918 (Persons on conditional release leaving Commonwealth; penalty), any sexually violent predator who leaves the state without permission or fails to return to the Commonwealth is guilty of a Class 6 felony. However, tampering with a GPS device is not subject to criminal penalties. According to DBHDS the creation of a Class 6 felony may result in cost avoidance because individuals who tampered with GPS device would typically be readmitted to the Virginia Center for Behavioral Rehabilitation instead of being convicted of the crime and sentenced to jail or prison. DBHDS reports that, since 2003, there have been 34 incidents of individuals who were placed on conditional release who have absconded, violating the terms of their conditional release. Of the 34 incidents, 29 incidents involved the tampering of the GPS device by the offender. Given the low incidence of GPS

tampering over the last twenty years, any potential cost avoidance would be minimal and is indeterminate.

According to the Virginia Criminal Sentencing Commission (VCSC), a review of fiscal year (FY) 2017-FY2022 Circuit Court Case Management System data identified two convictions for a sexually violent predator leaving the state without permission or failing to return, in violation of § 37.2-918. In both cases, this offense was a companion charge to a failure to register as a Tier III sex offender. One defendant was sentenced to a state-responsible (prison) term of 13 months on both offenses to run concurrently. The other defendant was sentenced to 14 months imprisonment for failing to register and received a one-year suspended sentence on the violation of § 37.2-918. However, it is not unknown if these individuals, in the course of the offenses, also tampered with their tracking devices.

For someone convicted of a Class 6 felony, a judge has the option of sentencing the offender to a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both. Therefore, this proposal could result in an increase in the number of persons sentenced to jail or prison.

There is not enough information available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail and \$15.00 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 2022), the estimated total state support for local jails averaged \$40.39 per inmate, per day in FY 2021.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 2, 2022 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

Any impact this bill may have on the Office of Attorney General is not known at this time.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Corrections, local and regional jails, Courts, Commonwealth's Attorneys, Office of the Attorney General, Public Defender's Offices, and the Department of Behavioral Health and Developmental Services

- 10. Technical Amendment Necessary:** No

- 11. Other Comments:** This bill is a companion to SB973.