



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2013 Amendment in the Nature of a Substitute (Patron Prior to Substitute – Adams, L.R.)

LD #: 23107002

Date: 02/16/2023

Topic: Probation and suspension terms

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 **

** Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

Summary of Proposed Legislation:

The 2021 General Assembly (Special Session I) passed legislation that limited the length of probation supervision, created new deadlines for notices of revocation hearings, defined technical violations, and restricted the time that may be imposed by a court when the defendant is found to have committed certain technical violations. Those provisions became effective on July 1, 2021.

The proposal amends § 19.2-303 of the *Code of Virginia*. Under § 19.2-303, the proposal provides that the court may fix the period of probation and the period of suspension for up to the statutory maximum period for which the defendant might originally have been sentenced for any felony offense and up to two years for an offense punishable as a Class 1 or Class 2 misdemeanor. Currently, the limitation on periods of probation and periods of suspension is up to the statutory maximum period of imprisonment for most offenses.

The proposal also adds crimes against nature (§ 18.2-361) to the list of offenses for which, if some period of the sentence for such offense is suspended, the judge is required to order that the period of suspension and period of probation be for a length of time equal to the statutory maximum period for which the defendant might originally have been sentenced. Currently, the period of suspension and period of probation may be set for a period less than the statutory maximum for these offenses.

Analysis:

According to Sentencing Guidelines data for fiscal year (FY) 2021 and FY2022, 2.7% of felony offenders were given a probation supervision term of more than five years (the limit set in current law in effect since July 1, 2021). During that two-year period, the median probation term was 24 months.

Based on FY2020-FY2021 Sentencing Revocation Report data, among felony offenders who had their probation/suspended sentence revoked for technical violations, 70.7% received a sentence of more than 14 days (the limit set in current law for most probationers who commit a second technical violation). For offenders given an active sentence to serve for technical violations, the median sentence was 6.0 months.

Because the legislation to establish the limits on supervised probation and sentences for technical violations only became effective on July 1, 2021, data are insufficient to examine practices emerging under current law. To the extent that interpretation and implementation of the current law have varied across the Commonwealth, the potential for disparity in the handling of revocations may have increased since its enactment. One Circuit Court judge in Virginia has ruled that the sentence limits specified in the new § 19.2-306.1 are unconstitutional. It is unclear the extent to which other judges may agree with that determination.

Following enactment of the legislation, the Commission adjusted the new Probation Violation Guidelines, which also took effect on July 1, 2021, to ensure they were compatible with the requirements of the new law. Specifically, the Guidelines were modified so that they will not recommend more incarceration time than permitted under the provisions of § 19.2-306.1.

Impact of Proposed Legislation:

State adult correctional facilities. By requiring judges to order a period of suspension and period of probation equal to the statutory maximum penalty for offenders convicted of felonies under §18.2-361, these offenders may be subject to revocation by the court for a longer period of time than under current law. Should additional offenders receive state-responsible (prison) terms for revocations (compared to current law), the proposal may increase the future prison bed space needs of the Commonwealth. Current data are insufficient to estimate the number of individuals likely to be affected by the proposed changes or the impact on sentencing; therefore, the magnitude of the impact cannot be determined.

Local adult correctional facilities. Similarly, the impact of the proposal on local-responsible (jail) bed space needs cannot be determined.

Adult community corrections resources. The impact on state community corrections resources and local community-based probation services cannot be estimated.

Virginia's Sentencing Guidelines. The Sentencing Commission issued revised Probation Violation Guidelines, effective July 1, 2021. The Probation Violation Guidelines, which were revised based on analysis of sentencing outcomes in revocation cases, were designed to provide judges with a benchmark of the typical, or average, outcome in similar cases. The historically-based Guidelines were then modified to be compatible with the law that took effect on July 1, 2021, such that the Guidelines will not recommend more incarceration time than permitted under § 19.2-306.1. No adjustment to the Guidelines is necessary.

Juvenile direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) 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 2 of the Acts of Assembly of 2022, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

prob05_7002