



VIRGINIA CRIMINAL SENTENCING COMMISSION



April 3, 2017

Sentencing Commission Session-Related Activities

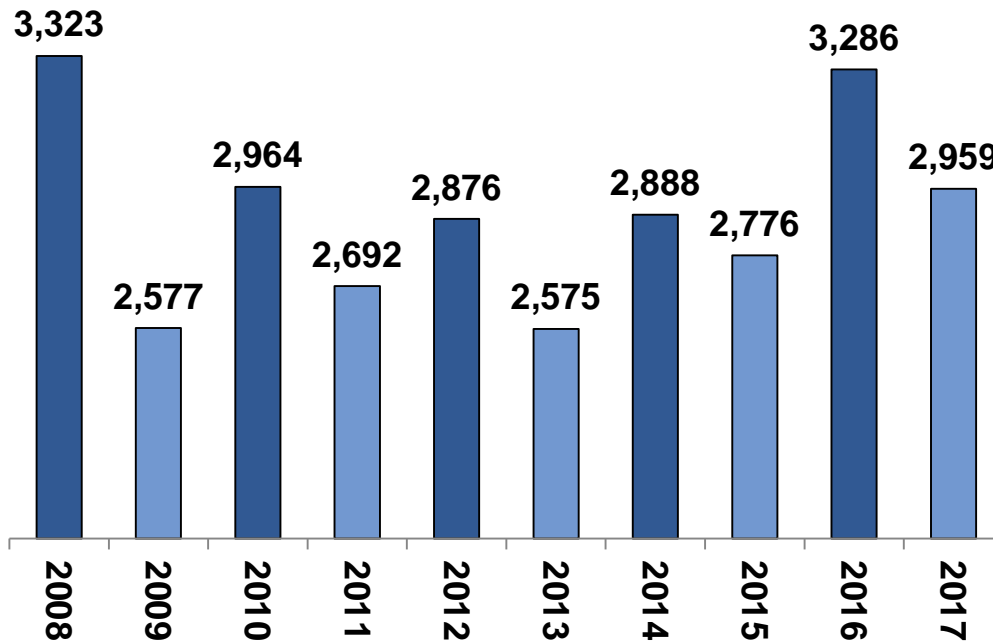
Sentencing Commission staff:

- **Prepare fiscal impact statements, as required by § 30-19.1:4;**
- **Monitor legislation that may have an impact on penalties, sentencing, time served, and sex offender registration, as well as legislation proposing criminal justice studies;**
- **Observe the judicial interview process;**
- **Respond to legislators' requests for supplemental information; and**
- **Provide technical assistance to other agencies.**



General Assembly Statistics

Number of Introduced Bills by Year



The General Assembly convenes for long sessions in even-numbered years (60 days) and short sessions in odd-numbered years (45 days).

Typically, more bills are referred to a Courts of Justice Committee than any other House or Senate committee.





Fiscal Impact Statements

Fiscal Impact Statements

§ 30-19.1:4

- **The Sentencing Commission must prepare a fiscal impact statement for any bill that would result in a net increase in the population of offenders housed in state adult correctional facilities.**
- **Law became effective July 1, 2000.**
- **Effective July 1, 2002, the impact statement must also:**
 - **Include an analysis of the impact on local and regional jails as well as state and local community corrections programs; and**
 - **Detail any necessary adjustments to the sentencing guidelines.**



Fiscal Impact Statements

§ 30-19.1:4

The requirement for an impact statement includes, but is not limited to, proposals that:

- **Add new crimes for which imprisonment is authorized;**
- **Increase the periods of imprisonment authorized for existing crimes;**
- **Raise the classification of a crime from a misdemeanor to a felony;**
- **Impose mandatory terms of imprisonment; or**
- **Modify laws governing release of prisoners.**



Fiscal Impact Statements

§ 30-19.1:4

- **The Sentencing Commission must estimate the increase in annual operating costs for prison facilities that would result if the proposal is enacted.**
 - **A six-year projection is required.**
 - **The highest single-year population increase is identified.**
 - **This is multiplied by the cost of holding a prison inmate for a year (operating costs, excluding capital costs).**
 - **For FY2016, this was \$32,509.**
 - **This amount must be printed on the face of the bill and a one-year appropriation must be made.**



Fiscal Impact Statements Additional Provisions

If the Sentencing Commission does not have sufficient information to project the impact, § 30-19.1:4 specifies that the words "Cannot be determined" must be printed on the face of the bill.

**Item 50 of Chapter 780 of the
2016 Acts of Assembly
(Appropriation Act)**

For any fiscal impact statement prepared by the Virginia Criminal Sentencing Commission pursuant to § 30-19.1:4, Code of Virginia, for which the commission does not have sufficient information to project the impact, the commission shall assign a minimum fiscal impact of \$50,000 to the bill and this amount shall be printed on the face of each such bill, but shall not be codified. The provisions of § 30-19.1:4, paragraph H. shall be applicable to any such bill.



Example

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 18.2-46.4 and 18.2-46.5 of the Code of Virginia, relating to providing*
 3 *support to terrorist organizations; penalty.*

4 [S 1154]
 5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That §§ 18.2-46.4 and 18.2-46.5 of the Code of Virginia are amended and reenacted as follows:**

8 **§ 18.2-46.4. Definitions.**

9 As used in this article, unless the context requires otherwise or it is otherwise provided:

10 "Act of terrorism" means an act of violence as defined in clause (i) of subdivision A of § 19.2-297.1
 11 *or an act that would be an act of violence if committed within the Commonwealth committed within or*
 12 *outside the Commonwealth with the intent to (i) intimidate the a civilian population at large; or (ii)*
 13 *influence the conduct or activities of the a government, including the government of the United States, a*
 14 *state, or a locality, through intimidation.*

15 "Base offense" means an act of violence as defined in clause (i) of subdivision A of § 19.2-297.1
 16 committed with the intent required to commit an act of terrorism.

17 "Weapon of terrorism" means any device or material that is designed, intended or used to cause
 18 death, bodily injury or serious bodily harm, through the release, dissemination, or impact of (i)
 19 poisonous chemicals; (ii) an infectious biological substance; or (iii) release of radiation or radioactivity.

20 **§ 18.2-46.5. Committing, conspiring and aiding and abetting acts of terrorism prohibited;**
 21 **penalty.**

22 A. Any person who commits or conspires to commit, or aids and abets the commission of an act of
 23 terrorism, as defined in § 18.2-46.4, is guilty of a Class 2 felony if the base offense of such act of

38 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
 39 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
 40 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
 41 **780 of the Acts of Assembly of 2016 requires the Virginia Criminal Sentencing Commission to**
 42 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**
 43 **necessary appropriation cannot be determined for periods of commitment to the custody of the**
 44 **Department of Juvenile Justice.**

38 2. That the provisions of this act may result in a net increase in periods of imprisonment or
 39 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot
 40 be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter
 41 780 of the Acts of Assembly of 2016 requires the Virginia Criminal Sentencing Commission to
 42 assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the
 43 necessary appropriation cannot be determined for periods of commitment to the custody of the
 44 Department of Juvenile Justice.



Fiscal Impact Statements

§ 30-19.1:4

- **The Department of Juvenile Justice (DJJ) prepares a fiscal impact estimate for any bill that would result in a net increase in the juvenile population committed to the state.**
- **DJJ provides this information to the Sentencing Commission and a combined statement is submitted to the General Assembly.**

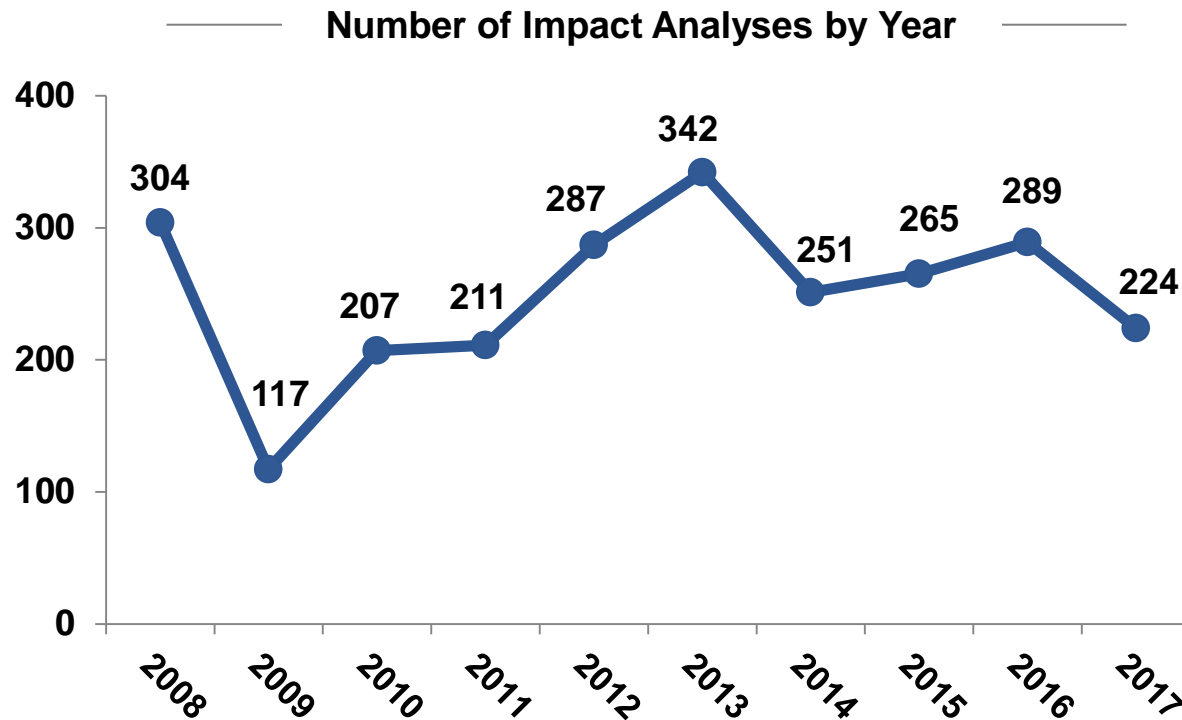


Calculation of Fiscal Impact

- **Sentencing Commission staff analyze available data to determine (or estimate) the number of offenders likely to be affected by the legislation and the impact on sentences and/or time served for those offenders.**
- **The data are used in a computer simulation model to estimate the net increase in the prison population likely to result from the proposal during the six years following enactment.**
- **If data do not contain detail to estimate the impact of the proposal, background statistics are provided, if possible.**



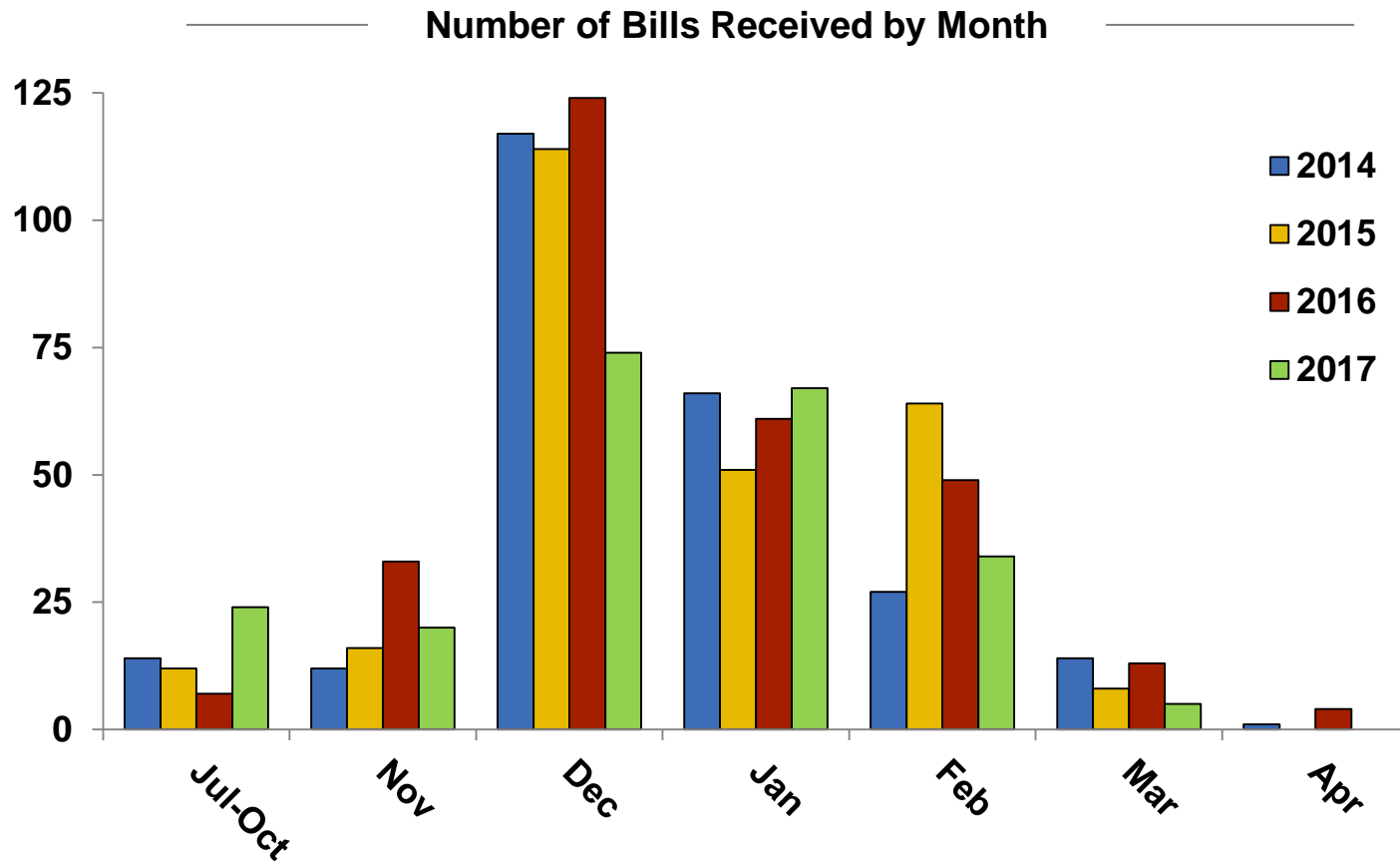
Impact Analyses Completed for 2008 - 2017 Sessions of the General Assembly



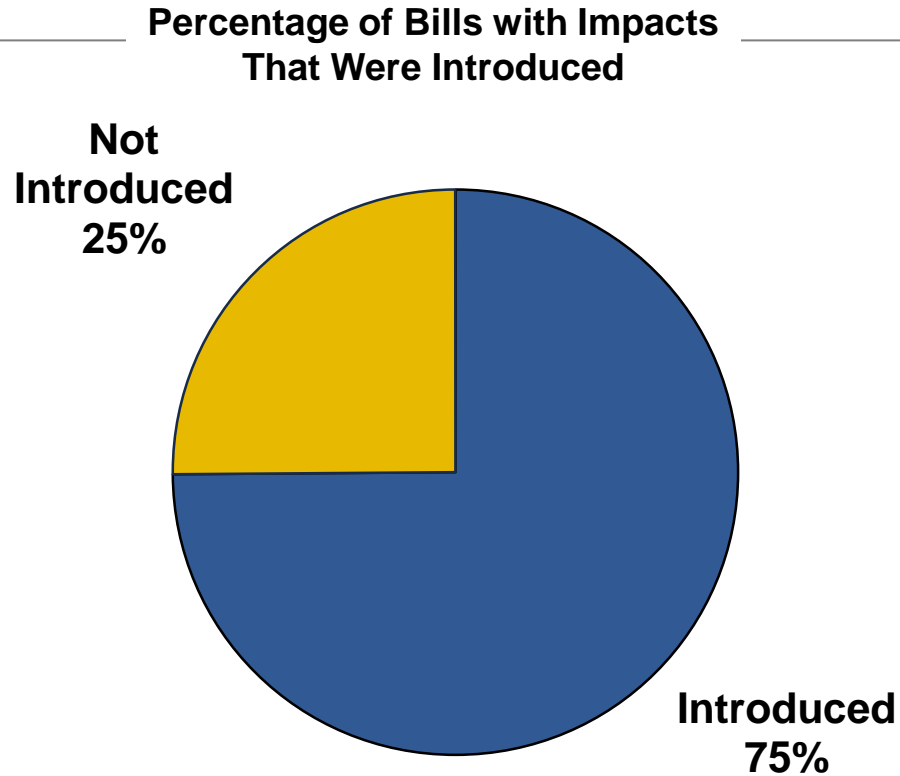
Multiple analyses may be performed on each bill, depending on the number of amended and substitute versions that are proposed or adopted.



Number of Bills Received for 2014 - 2017 Sessions of the General Assembly by Month



Status of Bills Received for 2017 Session



224 Analyses Conducted



2017 General Assembly Types of Legislative Changes

Type of Legislative Change	Percent
Expansion or Clarification of Crime	69.6%
New Crime	34.8%
Misdemeanor to Felony	9.8%
Increase Felony Penalty	5.4%
Mandatory Minimum	4.9%
Other	42.9%

224 Impact Analyses Completed

Percentages do not add to 100%, since proposed legislation can involve multiple types of changes. Multiple analyses may be performed on each bill, depending on the number of amended and substitute versions that are proposed or adopted.



Most Common Types of Offenses in Proposed Legislation

- **Firearms (35 analyses)**
- **Sex Offenders and Offenses (22 analyses)**
- **DWI/Motor Vehicle (22 analyses)**
- **Computer Crimes (20 analyses)**
- **Murder/Homicide (14 analyses)**
- **Rioting and Other Violent Offenses (13 analyses)**
- **Assault (11 analyses)**
- **Tax (11 analyses)**
- **Terrorism (10 analyses)**
- **Fraud/Larceny (10 analyses)**



Joint Legislative Audit and Review Commission (JLARC) Review of Fiscal Impact Statements

- **Legislators can request that JLARC review the Commission's fiscal impact statements.**
 - **The number of requests has ranged from 0 to 2 per year.**

- **During the 2017 Session, JLARC was asked to review two of the Commission's fiscal impact statements.**
 - **House Bill 1522 – Eliminate the death penalty for defendants with a severe mental illness at the time of the offense.**
 - » **JLARC concluded no budget amendment was necessary.**
 - **House Bill 2039 – Increase the sentencing guidelines for possession of child pornography.**
 - » **JLARC concurred with the Commission.**

Additional Analyses

- **Additional analyses may be conducted at the request of:**
 - **Legislators;**
 - **House Appropriations or Senate Finance staff;**
 - **Department of Planning and Budget staff;**
 - **Office of the Secretary of Public Safety and Homeland Security; or**
 - **Attorney General's Office.**

- **For example, an analysis may be requested for a proposal that would reduce the prison population (in which case, § 30-19.1:4 would not require the Commission to prepare a fiscal impact statement).**





Legislation Relating to the Sentencing Commission 2017 General Assembly

17100995D

SENATE JOINT RESOLUTION NO. 241

Offered January 11, 2017

Prefiled December 22, 2016

Confirming the appointment by the Chief Justice of the Supreme Court of Virginia of the Chairman of the Virginia Criminal Sentencing Commission.

Patron—Obenshain

Referred to Committee for Courts of Justice

RESOLVED by the Senate, the House of Delegates concurring, That the General Assembly confirm the following appointment made by Chief Justice Donald W. Lemons of the Supreme Court of Virginia pursuant to § 17.1-802 of the Code of Virginia:

The Honorable Edward L. Hogshire, Judge (retired), Circuit Court of the City of Charlottesville, 605 Northwood Avenue, **Charlottesville**, Virginia 22902, Chairman of the Virginia Criminal Sentencing Commission, effective January 1, 2017, for a term of four years ending December 31, 2020, to succeed himself.

HISTORY

01/18/17 Senate: Reported from Courts of Justice (15-Y 0-N)

01/24/17 Senate: Agreed to by Senate (40-Y 0-N)

02/08/17 House: Reported from Courts of Justice (21-Y 0-N)

02/13/17 House: Agreed to by House (97-Y 0-N)

HB 1655

Allowing for appeal in certain circumstances when the court departs from the sentencing guidelines

Introduced by: Joseph C. Lindsey

SUMMARY AS INTRODUCED:

Allows a court's failure to file the required written explanation for deviating from the discretionary sentencing guidelines to be reviewable on appeal if the sentence imposed exceeded the maximum of the guidelines range by more than 12 months. The appellate court reviewing the sentence must (i) determine whether evidence of potential bias by the court exists and (ii) if such evidence is found, review the sentence for abuse of discretion. Currently, failure to follow the guidelines is not reviewable on appeal or the basis of any other post-conviction relief.

VCSC FISCAL IMPACT: Not Required

HISTORY

01/05/17 House: Referred to Committee for Courts of Justice

01/13/17 House: Assigned Courts subcommittee: Criminal Law

01/16/17 House: Criminal Law Subcommittee recommends laying on the table

02/07/17 House: Left in Courts of Justice



SB 808

Requiring that juries receive the sentencing guidelines worksheets

Introduced by: William M. Stanley, Jr.

SUMMARY AS INTRODUCED:

Requires that the jury be given the applicable discretionary sentencing guideline worksheets during a sentencing proceeding and that the court instruct the jury that the sentencing guideline worksheets are discretionary and not binding on the jury. The bill requires sentencing guideline worksheets to be kept confidential by the jurors and filed under seal by the court. Currently, juries may not receive the sentencing guidelines.

VCSC FISCAL IMPACT: Not Required

HISTORY

10/19/16 Senate: Referred to Committee for Courts of Justice

01/25/17 Senate: Passed by indefinitely in Courts of Justice (8-Y 7-N)



HB 2087

Requiring an adequate written explanation when a judge departs from the sentencing guidelines

Introduced by: Charniele L. Herring

SUMMARY AS INTRODUCED:

Requires the written explanation that the court shall file with the record of a case when departing from the sentencing guidelines to adequately explain the sentence imposed in order to promote fair sentencing.

VCSC FISCAL IMPACT: Not Required

HISTORY

01/10/17 House: Referred to Committee for Courts of Justice

01/16/17 House: Assigned Courts subcommittee: Criminal Law

01/18/17 House: Criminal Law Subcommittee recommends laying on the table

02/07/17 House: Left in Courts of Justice



SB 1278

Raising the sentencing guidelines for possession of child pornography

Introduced by: Ryan T. McDougle

SUMMARY AS AMENDED:

Raises the midpoint of the recommended sentencing range for possession of child pornography by (i) 100% in cases in which the defendant has no previous conviction of a violent felony offense; (ii) 200% in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years; and (iii) 400% in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of 40 years or more. The bill also requires the guidelines to be calculated on the Section C (prison) worksheet.

VCSC FISCAL IMPACT: \$989,660 (30 beds)

HISTORY

01/10/17 Senate: Referred to Committee for Courts of Justice
01/16/17 Senate: Reported from Courts of Justice w/substitute (10-Y 1-N 1-A)
01/16/17 Senate: Rereferred to Finance
02/01/17 Senate: Passed by indefinitely in Finance (15-Y 1-N)



See also
HB 2039 (Miller)

HB 2039

Raising the sentencing guidelines for possession of child pornography

Introduced by: Jackson H. Miller

SUMMARY AS INTRODUCED:

Raises the midpoint of the recommended sentencing range for possession of child pornography by (i) 100% in cases in which the defendant has no previous conviction of a violent felony offense; (ii) 200% in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years; and (iii) 400% in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of 40 years or more. The bill also requires the guidelines to be calculated on the Section C (prison) worksheet. When imposing a sentence below the guidelines midpoint, the court must review all child pornography possessed by the defendant.

VCSC FISCAL IMPACT: \$989,660 (30 beds)

HISTORY

01/10/17 House: Referred to Committee for Courts of Justice

02/01/17 House: Criminal Law Subcommittee recommends reporting substitute (11-Y 0-N)

02/07/17 House: Left in Courts of Justice



See also
SB 1278 (McDougle)

HB 2039 (Substitute)

Raising the sentencing guidelines for possession of child pornography

SUMMARY OF SUBSTITUTE:

Returns the sentencing guidelines for the possession of child pornography to the guidelines that were in effect on June 30, 2016. The proposal also prohibits the Commission from adopting any future modifications or recommendations that would lower the discretionary sentencing guidelines or the midpoint to the recommended sentencing range for these convictions.

VCSC FISCAL IMPACT: \$169,984 (5 beds)

HISTORY

02/01/17 House: Criminal Law Subcommittee recommends reporting substitute (11-Y 0-N)

02/07/17 House: Left in Courts of Justice

At the request of the Committee Chairman, JLARC reviewed the fiscal impact statement for the substitute of HB 2039 and ultimately concurred with the Commission that the bill was likely to have an impact on prison beds.





**Fiscal Impact Review
2017 General Assembly Session**

Date: February 1, 2017

Bill number: HB 2039 Amendment in the Nature of a Substitute; Sentencing guidelines for possession of child pornography.

Review requested by: Chairman Albo, House Courts of Justice

JLARC Staff Fiscal Estimates

JLARC staff concur with the Fiscal Impact Statement prepared by the Virginia Criminal Sentencing Commission that HB 2039-substitute is likely to have a fiscal impact. If enacted, HB 2039-substitute would restore the discretionary sentencing guidelines for possession of child pornography to the guidelines that existed on June 30, 2016.

VCSC estimates that HB 2039-substitute would result in a net increase of five state-responsible prison beds by FY23, for a fiscal impact of \$169,984. A fiscal impact is anticipated because the bill enhances discretionary sentencing ranges through statute, rather than allowing ranges to be set by VCSC based on historical sentencing data as specified by §17.1-803. Judges in Virginia comply with discretionary sentencing guidelines that have statutory enhancement at a higher rate than they have historically complied with the sentencing guidelines for possession of child pornography (§ 18.2-374.1:1 A and B). Greater compliance with sentencing guidelines for possession of child pornography would result in less mitigation of sentences due to such a legislative enhancement. This would result in more offenders being sentenced to state-responsible prison time and increase the length of the sentence for a subset of offenders.



Recommendations in the 2016 Annual Report

No legislation was introduced during the 2017 General Assembly session pertaining to the recommendations contained in the Commission's 2016 Annual Report.

Pursuant to § 17.1-806, unless otherwise acted upon by the General Assembly, any recommendations contained in the Commission's Annual Report automatically take effect the following July 1.



Legislation Passed by the 2017 General Assembly

HB 1647

Expanding the circumstances under which the pre-sentence report may be waived

Introduced by: G. Manoli Loupassi

SUMMARY AS PASSED:

Provides that upon a conviction for a felony not listed in § 19.2-299(A,iii), the pre-sentence report may be waived by the defendant and the attorney for the Commonwealth. Currently, § 19.2-299 requires a pre-sentence be prepared for a felony unless there is a plea agreement between the defendant and the Commonwealth. Regardless, a pre-sentence report must be prepared if the felony is listed in § 19.2-299(A,iii).

VCSC FISCAL IMPACT: Not required

HISTORY:

01/20/17 House: Reported from Courts of Justice with amendments (20-Y 0-N)

01/26/17 House: Vote: Passage (99-Y 0-N)

02/06/17 Senate: Reported from Courts of Justice with amendment (15-Y 0-N)

02/08/17 Senate: Passed Senate with amendment (39-Y 0-N)

02/10/17 House: Senate amendment agreed to by House (95-Y 0-N)

02/17/17 Approved by Governor - Acts of Assembly Chapter 45
(effective 7/1/17)

HB 1485

Expanding the list of offenses that prohibit proximity to children

Introduced by: Richard P. Bell

SUMMARY AS PASSED:

Includes in the list of sex offenses that prohibit a person convicted of such offenses from being or residing in proximity to schools and certain other property where children congregate or from working on school property any similar offenses under the laws of any foreign country or political subdivision thereof or the United States or any political subdivision thereof.

VCSC FISCAL IMPACT: Cannot be determined (\$50,000)

HISTORY:

02/07/17 House: Vote: Passage (95-Y 1-N)
02/13/17 Senate: Reported from Courts of Justice with substitute (13-Y 0-N)
02/13/17 Senate: Rereferred to Finance
02/15/17 Senate: Reported from Finance with amendment (16-Y 0-N)
02/24/17 Senate: Conference report agreed to by Senate (40-Y 0-N)
02/24/17 House: Conference report agreed to by House (93-Y 1-N)
03/16/17 Approved by Governor - Acts of Assembly Chapter 507
(effective 7/1/17)

BUDGET AMENDMENT: Yes



See also
SB 1072 (Deeds) –
Left in Finance

HB 1815

Increasing the penalty for certain computer trespass crimes

Introduced by: David E. Yancey

SUMMARY AS PASSED:

Increases the Class 1 misdemeanor computer trespass crimes to a Class 6 felony if the computer affected is one that is exclusively for the use of, or used by or for, the Commonwealth, a local government within the Commonwealth, or certain public utilities.

VCSC FISCAL IMPACT: Cannot be determined (\$50,000)

HISTORY:

02/03/17 House: Reported from Appropriations (20-Y 0-N)
02/07/17 House: Vote: Block vote passage (97-Y 0-N)
02/13/17 Senate: Reported from Courts of Justice with substitute (13-Y 0-N)
02/15/17 Senate: Reported from Finance (16-Y 0-N)
02/17/17 Senate: Passed Senate with substitute (40-Y 0-N)
02/21/17 House: Senate substitute agreed to by House (97-Y 0-N)
03/16/17 Approved by Governor - Acts of Assembly Chapter 562
(effective 7/1/17)

BUDGET AMENDMENT: Yes



See also
SB 1138 (Mason) –
Left in Finance

SB 1390

Establishing a new requirement for special cigarette exemption certificates to not pay sales tax at time of purchase

Introduced by: Janet D. Howell and Thomas K. Norment, Jr.

SUMMARY AS PASSED:

Creates a new requirement that purchasers of cigarettes for resale must apply for a special cigarette exemption certificate from the Department of Taxation to not be liable for the payment of sales tax at the time of purchase. The bill sets forth requirements and establishes procedures for the application, renewal, denial, and revocation of the certificates. Provisions of the bill requiring the use of the certificate have a delayed effective date of Jan. 1, 2018.

VCSC FISCAL IMPACT: Cannot be determined (\$50,000)

HISTORY:

01/24/17 Senate: Reported from Finance with substitute (16-Y 0-N)

01/27/17 Senate: Passed Senate (39-Y 0-N)

02/13/17 House: Reported from Finance (19-Y 1-N)

02/15/17 House: Vote: Passage (92-Y 5-N 1-A)

03/13/17 Approved by Governor - Acts of Assembly Chapter 453
(effective – see bill)

BUDGET AMENDMENT: Yes



Identical to
HB 1913 (Anderson) –
Signed by Governor

SB 1154

Defining new felony offenses for providing material support for terrorism

Introduced by: Bryce E. Reeves

SUMMARY AS PASSED:

Specifies that providing material support to an individual or organization whose primary objective is to commit an act of terrorism with the intent to further such objective is a Class 3 felony or, if death results, a Class 2 felony. The bill also expands the definition of terrorism to include an act committed outside the Commonwealth that would meet the definition of an act of violence if such act was committed within the Commonwealth.

VCSC FISCAL IMPACT: Cannot be determined (\$50,000)

HISTORY:

01/16/17 Senate: Reported from Courts of Justice with substitute (12-Y 0-N)
02/01/17 Senate: Reported from Finance (16-Y 0-N)
02/03/17 Senate: Passed Senate (40-Y 0-N)
02/08/17 House: Reported from Courts of Justice with substitute (21-Y 0-N)
02/13/17 House: Reported from Appropriations (21-Y 0-N)
02/15/17 House: Passed House with substitute with amendments (99-Y 0-N)
02/17/17 Senate: House substitute w/amendments agreed to (40-Y 0-N)
03/20/17 Approved by Governor - Acts of Assembly Chapter 668
(effective 7/1/17)

BUDGET AMENDMENT: Yes



Incorporates
SB 1052 (Howell)

See also
HB 2410 (Gilbert) –
Passed

HB 2470

Adding new drugs to Schedules II and V of the Drug Control Act

Introduced by: S. Chris Jones

SUMMARY AS PASSED:

Adds thiafentanil to Schedule II of the Drug Control Act and brivaracetam to Schedule V of the Drug Control Act.

VCSC FISCAL IMPACT: Cannot be determined (\$50,000)

HISTORY:

01/26/17 House: Reported from Health, Welfare and Institutions (22-Y 0-N)
02/03/17 House: Reported from Appropriations (20-Y 0-N)
02/07/17 House: Vote: Block Vote Passage (97-Y 0-N)
02/08/17 Senate: Referred to Committee on Education and Health
02/16/17 Senate: Reported from Education and Health (15-Y 0-N)
02/16/17 Senate: Reported from Finance (13-Y 0-N)
02/21/17 Senate: Passed Senate (40-Y 0-N)
03/16/17 Approved by Governor - Acts of Assembly Chapter 612
(effective 7/1/17)

BUDGET AMENDMENT: Yes

HB 1856

Requiring indefinite probation until restitution is paid in full

Introduced by: Robert B. Bell

SUMMARY AS PASSED:

Provides that for any offense occurring on or after July 1, 2017, if restitution is ordered, the court shall place the defendant on indefinite probation until restitution is paid in full. A probation agency ordered to monitor restitution payments must notify the court and Commonwealth's attorney of any unpaid restitution 30 days prior to release from supervision. Otherwise, the court must schedule a hearing within 90 days if any restitution remains unpaid on the date when restitution was to be paid in full. A mechanism is created for releasing a defendant from indefinite probation even if some restitution remains unpaid.

VCSC FISCAL IMPACT: Not required

HISTORY:

01/27/17 House: Reported from Courts of Justice with substitute (21-Y 0-N)
02/03/17 House: Reported from Appropriations (20-Y 0-N)
02/07/17 House: Vote: Passage (91-Y 6-N)
02/13/17 Senate: Reported from Courts of Justice with substitute (13-Y 0-N)
02/15/17 Senate: Reported from Finance with substitute (16-Y 0-N)
02/20/17 Senate: Passed Senate with substitute (40-Y 0-N)
02/21/17 House: Senate substitute agreed to by House (80-Y 15-N 1-A)
03/24/17 House: Governor's recommendation received



Identical to
SB 1285 (Obenshain) –
Passed House & Senate



Legislation Not Passed by the 2017 General Assembly

HB 1522

Eliminating the death penalty for defendants who had a severe mental illness at the time of the offense

Introduced by: James A. Leftwich

SUMMARY AS INTRODUCED:

Provides that a defendant in a capital case who had a severe mental illness, which is defined in the bill, at the time of the offense is not eligible for the death penalty. The bill establishes procedures for determining whether a defendant had a severe mental illness at the time of the offense and provides for expert evaluators. When the defendant's severe mental illness is at issue, a determination will be made by the jury, or by the judge in a bench trial, as part of the sentencing proceeding, and the defendant bears the burden of proving his severe mental illness by a preponderance of the evidence.

VCSC FISCAL IMPACT: Cannot be determined (\$50,000)

HISTORY:

12/22/16 House: Referred to Committee for Courts of Justice

01/27/17 JLARC reviewed VCSC fiscal impact statement and concluded that a budget amendment was not necessary

01/30/17 House: Criminal Law Subcommittee recommends laying on the table

02/07/17 House: Left in Courts of Justice



Joint Legislative Audit and Review Commission (JLARC)

Review of House Bill 1522

VCSC Determination

- **By removing the applicability of the death penalty in cases where the offender had a severe mental illness, the proposed legislation may increase the state-responsible (prison) bed space needs of the Commonwealth.**
- **Existing data do not provide sufficient detail to estimate the number of individuals who would be sentenced to a term of life imprisonment instead of death if the proposal is enacted.**
 - **While the impact on prison bed space needs cannot be determined, any impact within the six-year window required for corrections impact statements is likely to be small.**



**Fiscal Impact Review
2017 General Assembly Session**

Date: January 27, 2017

Bill number: HB 1522; Death penalty; severe mental illness

Review requested by: Chairman Albo, House Courts of Justice

JLARC Staff Fiscal Estimates

JLARC staff concur with the Fiscal Impact Statements prepared by the Virginia Criminal Sentencing Commission and the Department of Planning and Budget that the fiscal impact of HB 1522 is likely to be small. The bill creates a requirement, upon a motion by the defense, for a judge or jury to determine whether a defendant in a capital case was severely mentally ill at the time of the offense. If a defendant is determined to be severely mentally ill, the jury or judge would be required to impose a sentence of life imprisonment rather than death.

In the current biennium, the proposed legislation would likely have no fiscal impact. Mental health evaluations are already conducted for defendants in capital cases, and any evaluation introduced by this bill would be combined with existing evaluations. The long-term fiscal impacts would be small, because few offenders are sentenced to death, and the proposed legislation would probably not change the death sentence for at least some of these individuals. Further, for any individuals affected, the long-term costs and savings are expected to largely offset each other.

Budget amendment necessary? A budget amendment is not necessary. If enacted, HB 1152 would probably change a death sentence to life imprisonment for fewer than one person per year. Further, the increased cost for any offender affected would not materialize for more than a decade, and would be largely offset by savings from avoided death penalty appeals.



HB 1616

Expanding circumstances in which a person may be found guilty of felony homicide

Introduced by: L. Scott Lingamfelter

SUMMARY AS PASSED HOUSE:

Provides that a person is guilty of felony homicide if the underlying felonious act involved the sale, gift, distribution, etc., of a Schedule I or II drug and (i) another person's death results from use of the drug and (ii) the drug is the proximate cause of death. The bill serves to overrule the Court of Appeals of Virginia decision in *Woodard v. Commonwealth* (2013).

VCSC FISCAL IMPACT: Cannot be determined (\$50,000)

HISTORY

02/01/17 House: Reported from Courts of Justice with substitute (15-Y 6-N)
02/03/17 House: Reported from Appropriations (20-Y 0-N)
02/07/17 House: Vote: Passage (67-Y 28-N)
02/13/17 Senate: Reported from Courts of Justice with substitute (14-Y 0-N)
02/15/17 Senate: Reported from Finance with amendment (16-Y 0-N)
02/20/17 Senate: Passed Senate with substitute with amendment (37-Y 3-N)
02/22/17 Senate: Senate requested conference committee
02/23/17 House: House acceded to request for conference committee
02/25/17 House: No further action taken

BUDGET AMENDMENT: Yes





HB 2253

Increasing penalties for using a firearm in the commission of a felony

Introduced by: L. Scott Lingamfelter

SUMMARY AS INTRODUCED:

Increases from three to five years for a first offense and from five to 10 years for a second or subsequent offense the mandatory minimum sentences for use or display of a firearm during the commission of certain felonies.

VCSC FISCAL IMPACT: \$4,175,024 (128 beds)

HISTORY

01/11/17 House: Referred to Committee for Courts of Justice

02/07/17 House: Left in Courts of Justice

SB 1039

Prohibiting possession of a firearm by a person subject to certain protective orders

Introduced by: Janet D. Howell

SUMMARY AS INTRODUCED:

Expands the Class 6 felony defined in § 18.2-308.1:4 (B) to prohibit persons subject to a protective order issued pursuant to § 19.2-152.10, related to the health and safety of a petitioner and their family or household members, from knowingly possessing a firearm. The 2016 General Assembly amended § 18.2-308.1:4 to prohibit persons subject to a protective order issued pursuant to § 16.1-279.1, related to cases of family abuse, from knowingly possessing a firearm; violation of this subsection is a Class 6 felony.

VCSC FISCAL IMPACT: Cannot be determined (\$50,000)

HISTORY

01/23/17 Senate: Reported from Courts of Justice with substitute (8-Y 6-N)

01/23/17 Senate: Rereferred to Finance

01/31/17 Senate: Passed by indefinitely in Finance (11-Y 5-N)





SB 851

Allowing for nonconsecutive days in jail for certain felonies

Introduced by: William M. Stanley, Jr.

SUMMARY AS INTRODUCED:

Replaces the provision limiting nonconsecutive days in jail for the purpose of allowing the defendant to retain gainful employment with a good cause standard and allows the court to sentence the defendant to nonconsecutive days in jail only if the active portion of the sentence remaining to be served is 90 days or less. If there is no objection from the Commonwealth, the court may sentence felons to nonconsecutive days in jail if the felony was not an act of violence as defined in § 19.2-297.1.

VCSC FISCAL IMPACT: Not required

HISTORY

12/02/16 Senate: Referred to Committee on Rehabilitation & Social Services

01/27/17 Senate: Stricken at request of patron in Rehabilitation & Social Services (15-Y 0-N)



SB 816

Increasing the threshold for felony larceny

Introduced by: Scott A. Surovell

SUMMARY AS PASSED SENATE:

Increases from \$200 to \$500 the threshold amount of money taken or value of goods or chattel taken at which the crime rises from petit larceny to grand larceny.

VCSC FISCAL IMPACT: Not required

HISTORY

01/23/17 Senate: Reported from Courts of Justice with substitute (13-Y 2-N)

01/26/17 Senate: Passed Senate (28-Y 12-N)

01/31/17 House: Referred to Committee for Courts of Justice

02/15/17 House: Criminal Law Subcommittee recommends passing by indefinitely by voice vote

02/21/17 House: Left in Courts of Justice

Incorporates
SB 923 (Peterson)

See also
HB 1704 (Filler-Corn) –
Left in Courts of Justice



Virginia Criminal Sentencing Commission

100 North Ninth Street • Richmond, Virginia 23219 • Tel. 804.225.4398 • FAX 804.786.3934

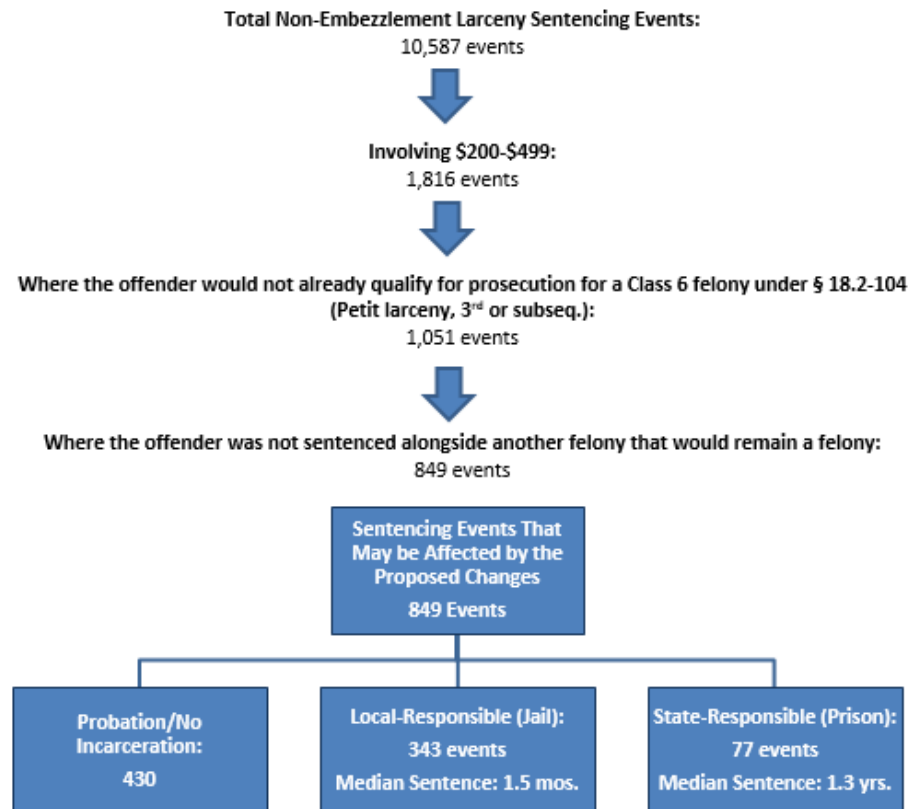
On the web at www.vcsc.virginia.gov

Response to Information Request

Requester: Senator Bryce E. Reeves

Scenario: Reducing penalty for larceny offenses involving \$200 to \$499 to a misdemeanor.

Analysis: Using the database constructed for the 2015 Larceny/Fraud study, in which the sample was weighted to reflect the population of larceny and fraud sentencing events in FY2012-FY2013, identified cases that would most likely be affected by this change:



HB 2339

Authorizing probation officers to commit probation violators to jail for brief periods

Introduced by: Robert B. Bell

SUMMARY AS PASSED:

Provides that a court may delegate to a probation officer the authority to sanction an offender who has violated any term or condition of supervision. The bill authorizes a probation officer to commit such offender to jail for no more than five consecutive days, provided that (i) the officer's supervisor has approved the action, (ii) the probation officer has issued a noncompliance letter, and (iii) the offender has knowingly executed a written waiver of his right to a hearing and has consented to the commitment. The bill limits the total of all such sanction days that may be imposed by a probation officer to no more than 30 days during the offender's probation period.

VCSC FISCAL IMPACT: Not required

STATUS:

01/13/17 House: Referred to Committee for Courts of Justice

02/01/17 House: Criminal Law Subcommittee recommends reporting
with amendments (7-Y 4-N)

02/03/17 House: Failed to report (defeated) in Courts of Justice (8-Y 11-N)



SB 825

Allowing for a new sentencing hearing in certain jury cases adjudicated after the abolition of parole

Introduced by: Jennifer T. Wexton

SUMMARY AS PASSED SENATE:

Provides that a person who committed a nonviolent felony offense after the abolition of parole (1995) and was sentenced by a jury prior to the Supreme Court of Virginia decision in *Fishback v. Commonwealth* (2000), in which the Court held that a jury should be instructed on the fact that parole has been abolished, is entitled to a new sentencing proceeding if the jury never received the instruction. Such person must file a petition with the circuit court, which must empanel a new jury and notify the attorney for the Commonwealth. If the attorney for the Commonwealth and the petitioner agree, the jury sentencing proceeding can be waived, allowing the court to fix punishment.

VCSC FISCAL IMPACT: Not required

HISTORY

01/23/17 Senate: Reported from Courts of Justice with amendments (9-Y 6-N)

01/26/17 Senate: Passed Senate (22-Y 18-N)

01/31/17 House: Referred to Committee for Courts of Justice

02/15/17 House: Criminal Law Subcommittee recommends laying on the table

02/21/17 House: Left in Courts of Justice



SB 1152

Allowing for parole for certain inmates who were juveniles at the time of the offense

Introduced by: David W. Marsden

SUMMARY AS PASSED SENATE:

Provides that any person sentenced to a term of life imprisonment for a single or multiple felony offenses committed while that person was a juvenile and who has served at least 25 years of such sentence, or any person who has active sentences that total more than 25 years for a single or multiple felony offenses committed while that person was a juvenile and who has served at least 25 years of such sentences, shall be eligible for parole.

VCSC FISCAL IMPACT: Not required

HISTORY

- 01/09/17 Senate: Referred to Committee on Rehabilitation & Social Services
- 01/13/17 Senate: Rereferred from Rehabilitation & Social Services (15-Y 0-N) to Courts of Justice
- 01/30/17 Senate: Reported from Courts of Justice with substitute (10-Y 5-N)
- 02/02/17 Senate: Passed Senate (28-Y 12-N)
- 02/06/17 House: Referred to Committee for Courts of Justice
- 02/15/17 House: Criminal Law Subcommittee recommends laying on the table
- 02/21/17 House: Left in Courts of Justice





Immediate Sanction Probation Program

No legislation was introduced, nor was a budget amendment requested, to extend the Immediate Sanction Probation Program.

Without such, the sunset date of § 19.2-303.5 is July 1, 2017.



General Assembly website:

<http://viriniageneralassembly.gov/>