

**REPORT OF THE**

**JOINT SUBCOMMITTEE  
ON THE CORRECTIONS  
SPECIAL RESERVE FUND**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**SENATE DOCUMENT NO. 29**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
2000**

**MEMBERS OF THE  
JOINT SUBCOMMITTEE ON  
THE CORRECTIONS SPECIAL RESERVE FUND**

The Honorable Clifton A. Woodrum, Chairman  
The Honorable Kenneth W. Stolle, Vice-Chairman

*From the Senate Finance Committee*

The Honorable Richard L. Saslaw  
The Honorable Kenneth W. Stolle

*From the House Appropriations Committee*

The Honorable Robert S. Bloxom  
The Honorable Clifton A. Woodrum

*From the Senate Courts of Justice Committee*

The Honorable Henry L. Marsh, III  
The Honorable Martin E. Williams

*From the House Courts of Justice Committee*

The Honorable William J. Howell  
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## EXECUTIVE SUMMARY

The 1993 General Assembly adopted legislation (§ 30-19.1:4 et al, Code of Virginia) to enable the legislature to consider the fiscal impact of proposed bills that have the effect of increasing the adult correctional population. The 1999 Appropriation Act created a joint subcommittee to review this legislation.

The following issues were considered and resolved by the joint subcommittee at its first meeting, on August 23, 1999. A copy of proposed legislation to address these concerns is attached.

### **What is the legislative intent of § 30-19.1:4?**

- *Recommendation.* The joint subcommittee finds that the intent of § 30-19.1:4 is primarily to encourage careful consideration of the offender population impact of proposed criminal sentencing legislation, so that the Commonwealth's sentencing policies are consistent with the projected resources available for adult and juvenile corrections.
  - The establishment of a special fund is a means to accomplish this end, not the end in itself. Therefore, the main purpose of this process need not be to build up a large fund balance.

### **Should there be further limits on the time for introduction?**

- *Recommendation.* The joint subcommittee considered this issue and decided that additional restrictions should not be placed on the ability of members to introduce legislation. For this reason, the joint subcommittee does not recommend amending the statute to provide for an earlier filing date. The current escape clause should be maintained.

**Should there be specific deadlines established for re-referral of bills by the Courts of Justice Committees to the Senate Finance and House Appropriations Committees?**

- *Recommendation.* The joint subcommittee recommends that the process of having the committee chairmen informally agree to the deadlines each year be continued.

**Should the process be extended to reconvened sessions?**

- *Recommendation.* The joint subcommittee finds that the General Assembly does not have the constitutional authority to imposed additional restrictions on the Governor by restricting his ability to introduce amendments during a reconvened session without the fiscal impact review. Therefore, no recommendation is made.

**Should the scope of the process be expanded?**

- *Recommendation.* The joint subcommittee recommends that the scope of § 30-19.1:4 not be expanded at this time, due to the potential impact on committee workload. This question may be considered at a future time, as more data becomes available.

**Should those bills that are included in the current scope of the process be analyzed to determine their impact on local facilities and programs?**

- *Recommendation.* The joint subcommittee recommends that § 30-19.1:4 be amended to require that the fiscal impact analysis prepared on bills currently included in the process include an analysis of the impact on local and regional jails and juvenile detention facilities, as well as on state and local community corrections programs, effective July 1, 2002.

**Should the ten-year look-forward time frame be reduced?**

- *Recommendation.* The joint subcommittee recommends that § 30-19.1:4 be amended to provide for a six-year look forward period.

**Should there be one rather than two impact statements?**

- *Recommendation.* The joint subcommittee recommends that § 30-19.1:4 be amended to require that one fiscal impact statement be prepared by the staff of the Virginia Criminal Sentencing Commission, for all adult sentencing changes. All agencies would be expected to provide necessary data.

**How should the annual cost per inmate be determined?**

- *Recommendation.* The joint subcommittee recommends that § 30-19.1:4 be amended to direct that the Department of Planning and Budget provide the Sentencing Commission with an annual update of the operating cost per inmate, to be used by the Sentencing Commission in calculating the required appropriation to be printed on the face of the bill.

**What if the population impact cannot be determined?**

- *Recommendation.* The joint subcommittee recommends that § 30-19.1:4 be amended to specify that the words: "Cannot be Determined" be printed on the face of any proposed bill for which the Sentencing Commission does not have sufficient information to project the offender population impact.

**Who should prepare the statements for juvenile sentencing bills?**

- *Recommendation.* The joint subcommittee recommends that the current process be continued under which fiscal impact statements for juvenile sentencing changes would continue to be prepared by the Department of Planning and Budget in conjunction with the Department of Juvenile Justice.

**Should the permissible uses of the set-aside funds be expanded?**

- *Recommendation.* The joint subcommittee recommends that § 30-19.1:4 be amended:
  - To provide for expenditure of the special reserve funds for capital (but not operating) expenses, including the cost of pre-planning studies which may be required to initiate new projects; and,
  - To eliminate restrictions on the timing of the expenditures from the fund.

**Should there be a minimum threshold dollar amount below which the special fund deposit need not be required?**

- *Recommendation.* The joint subcommittee recommends that § 30-19.1:4 not be amended to provide that if the bill has an impact of fewer than 10 offenders, no appropriation would be required.



**Report of the  
Joint Subcommittee on the Corrections  
Special Reserve Fund  
To  
The Governor and the General Assembly of Virginia  
Richmond, Virginia  
January 2000**

**To: Honorable James Gilmore, Governor of Virginia  
And  
The General Assembly of Virginia**

**AUTHORITY FOR THE STUDY**

- The 1999 Appropriation Act (Chapter 935, Item 477 D) requires a study of the offender population impact process:

*"D. A joint subcommittee composed of two members each from the Senate Finance Committee, the House Appropriations Committee, the House Courts of Justice Committee, and the Senate Courts of Justice Committee, appointed by their respective chairmen, shall examine the intent, implementation and procedures established by § 30-19.1:4, Code of Virginia, and make recommendations for modifications, as appropriate, to the 2000 Session of the General Assembly."*

**BACKGROUND**

- Discussion of steps to address the offender population impact of proposed legislation began with the 1989 Report of the Commission on Prison and Jail Overcrowding.

*"The General Assembly should consider amending the Code of Virginia so that any proposed legislation which would have the effect of increasing the prison or jail population would become law only if the funds required to increase the capacity of the system commensurately are appropriated."*

- At that time, the Commission recognized the demand for prison bedspace was increasing faster than the ability of the Commonwealth to construct new prisons, leading to severe overcrowding in local jails.
- The 1993 General Assembly adopted legislation that was intended to provide increased review of proposed legislation dealing with criminal sentencing.

### **Similar Legislation in Other States**

- The Virginia legislation was modeled after a similar statute adopted in 1985 in Tennessee. Section 9-6-119, TCA (the Tennessee statute) required that:

*"For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law."*
- Similar statutes were adopted in Colorado (1991), Nebraska (1993), and South Dakota (1994).

### **Differences Among the State Statutes**

- The various statutes enacted in Tennessee, Colorado, South Dakota, Nebraska, and Virginia differ in several respects:
  - Look-forward period. The length of time after the change in sentencing policy becomes effective, that the fiscal impact must be addressed. This period ranges from four years in Nebraska to ten years in Tennessee and Virginia.

- Fund Source. The types of funds which are required to be appropriated, including general funds (Colorado) and non-general funds (e.g. Special Funds in Virginia).
- Use of Funds. The uses to which the funds must be placed, in some cases for capital expenses, and in other cases for operating expenses.

### Virginia Legislation

- The 1993 Virginia legislation (HB 1768, Chapter 804) incorporated language similar to that included in the Tennessee statute. The Virginia legislation stated:  
  
*"For any law becoming effective on or after July 1, 1994, which results in a net increase in periods of imprisonment in state correctional facilities, a one-year appropriation shall 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 ten fiscal years following the effective date of the law."*
- The Virginia legislation also required preparation of a fiscal impact statement, and that the amount of the estimated appropriation be printed on the face of the bill. The appropriations were to be deposited into a special fund, to be used for operating expenses.

### Subsequent Changes in the Virginia Legislation

- 1995 Amendments. The experience in processing these bills during the 1994 session underscored the importance of early filing for this process to work as intended.
  - Accordingly, the 1995 General Assembly (HB 2258, Chapter 462) required that bills with offender population impact be filed on or before the first day of the session, unless requested by the Governor or in accordance with the rules of the General Assembly.

- The 1995 amendment also directed the Virginia Criminal Sentencing Commission to prepare impact statements for bills affecting the adult offender population.
- 1996 Amendments. Further changes were adopted by the 1996 General Assembly.
- The 1996 General Assembly (HB 499, Chapter 972):
  - Removed the Senate Finance and House Appropriations Committees from the process of preparing the offender impact statements.
  - Added bills affecting the juvenile offender population in the Department of Juvenile Justice;
  - Created the Corrections Special Reserve Fund as a special nonreverting fund on the books of the Comptroller, and specified that moneys in the fund be expended solely for the operation of those facilities where offenders are maintained, including community programs which provide supervision or treatment of offenders; and,
  - Specified that moneys in the Special Reserve Fund shall not be appropriated for expenditure prior to the first year in which the fiscal impact of any such bill is expected to occur.
- The 1996 General Assembly (HB 738, Chapter 685) also amended § 30-19.1:6, which requires first-day introduction, to clarify that the enactment of any prison impact bill shall be conclusive proof that the procedural requirements have been satisfied or waived.

### **Corrections Special Reserve Fund**

- Since the 1994 session, a total of over \$28.9 million has been deposited into the fund.

- The chart on the next page lists each of the deposits made by bill number and chapter number. The projected balance in the fund as of June 30, 2000, is about \$385,000.

**DEPOSITS TO CORRECTIONS SPECIAL RESERVE FUND (§ 30-19.1:4)**

<b>Session</b>	<b>Item</b>	<b>Bill</b>	<b>Chapter</b>	<b>Subject</b>	<b>Deposit</b>	<b>Fiscal Year</b>	<b>Notes</b>
1994	557.G.1	SB 520	859	Serious Juvenile Offenders	\$407,820	FY 1995	1
		HB 1243	949	Serious Juvenile Offenders (identical bill)	NA	FY 1995	1
1995	557.G.1 (a)	SB 940	834	Criminal Sexual Assault	\$70,000	FY 1995	
	557.G.1 (b)			Special Session Parole Abolition	\$3,131,238	FY 1995	
				Special Session Parole Abolition	\$18,246,982	FY 1996	
1996	455.1	HB 251	755	Juvenile Justice Reform	\$5,382,720	FY 1997	
		SB 44	914	Juvenile Justice Reform (identical bill)	NA		
		HB 88	527	Bodily injury of Probation Officer by juvenile	\$125,000	FY 1997	
		SB 26	913	Fortified drug houses	\$250,000	FY 1997	
				<b>Interest Earnings</b>	\$229,641	FY 1997	
1997	455.1	HB 157	691	Driving under the influence	\$375,000	FY 1998	2
		HB 1889	832	Arson of a church	\$125,500	FY 1998	
		HB 1911	833	Hate crimes - assault & battery	\$62,500	FY 1998	3
		SB746	747	Sex offenders	\$62,500	FY 1998	
				<b>Interest Earnings</b>	\$141,750		
1998	477.A	SB 199	518	Telecommunications	\$62,500	FY 1999	
1999	477.B	HB 346		Carnal knowledge of a prisoner	\$62,500	FY 2000	
		HB 1691		Bail Reform/Project Exile	\$127,750	FY 2000	
	502.1	SB 835		Assault of juvenile Probation Officer	\$19,500	FY 2000	
				<b>Interest Earnings</b>	\$64,128	FY 2000	
					<u>\$28,947,029</u>		

(1) \$1,417,660 printed on face of bill as enrolled

(2) \$0 printed on face of bill as enrolled

(3) \$312,500 printed on face of bill as enrolled; Governor's amendment was to be funded in a caboose bill but was not

**SUMMARY REPORT ON THE CORRECTIONS SPECIAL RESERVE FUND (§ 30-19.1:4)**

	<u>Revenues</u>	<u>Expenditures</u>	<u>Balance</u>
<b>1994-96 Biennium (Chapter 853, 1995 Session)</b>			
Beginning Balance			\$0
Fiscal Impact of Sentencing Legislation	\$477,820		
Transfer from Public Safety Fund	\$21,378,220		
Department of Corrections (See Item 557.G.1 b) Operation of work centers/contract beds in Texas		(\$21,570,394)	
Department of Correctional Education		(\$28,923)	
Balance (as of June 30, 1996)			\$256,723
<b>1996-98 Biennium (Chapter 924, 1997 Session)</b>			
Fiscal Impact of Sentencing Legislation	\$6,383,220		
Interest Earnings	\$371,391		
Department of Juvenile Justice (Bon Air)		(\$818,636)	
Department of Corrections (Southampton Reception Center)		(\$4,986,629)	
Department of Correctional Education		(\$72,588)	
Cash Transfer to Department of Accounts		(\$16,315)	
Balance (as of June 30, 1998)			\$1,117,166
<b>1998-2000 Biennium (Chapter 935, 1999 Session)</b>			
Fiscal Impact of Sentencing Legislation	\$272,250		
Interest Earnings	\$64,128		
Department of Corrections		(\$1,000,000)	
Cash Transfer to Department of Accounts		(\$68,448)	
Projected Balance (as of June 30, 2000)	<u>\$28,947,029</u>	<u>(\$28,561,933)</u>	<u>\$385,096</u>

## PROBLEMS WITH THE CURRENT PROCESS

- The offender impact process has been in place for six years, but this is the first comprehensive review of the process.
- Overall, the process appears to have succeeded in forcing the General Assembly to consider the offender population impact of proposed sentencing legislation.
  - It appears that only about 14 such bills have been enacted since 1993, and those that have been passed have in many instances been amended in committee to reduce the projected offender population increases.
- However, a review of the implementation of the process suggests a number of concerns that should be addressed.

### Fiscal Concerns

- There has been little connection between the funds deposited into the special reserve fund, and the dollars spent.
- In the budget, as introduced, for the 1999 session, a balance of \$1 million was transferred indirectly to the general fund.
  - The Code of Virginia clearly states that the moneys in the fund are to be expended only for operating expenses for correctional facilities, but as of the 1999 session, there was no connection between the transfer of \$1 million, and the operating budget for correctional facilities.
  - The Department of Planning and Budget indicates these funds are being used for prison operating expenses.
- This is the only area in which the Senate Finance and House Appropriations Committees are required to set aside funds for the future costs of legislation adopted in the current session.



## Legal Concerns

- There have been instances where the process specified in the statute has not been followed, and this has led to concerns relative to the validity of the statute.
- For example, HB 1911 of the 1997 Session added enhanced penalties for certain hate crimes. The original bill had an impact of \$62,500, which was the amount appropriated in the Appropriations Act pursuant to §30-19.1:4.
  - However, an amendment added by the Governor and adopted during the reconvened 1997 Session changed the fiscal impact to \$312,500, but the amount appropriated did not change.
- In January 1999, a defendant was convicted and sentenced in Arlington General District Court pursuant to the enhanced penalties established by HB 1911.
- The case was appealed to Arlington Circuit Court based on the defendant's theory that the legislation was passed in violation of the Separation of Powers and Due Process provisions of both the Virginia and U.S. Constitutions.
- The Circuit Court denied the appeal, indicating if there was a constitutional violation, it was procedural and not substantive. The Judge indicated that the Court of Appeals might entertain the motion.
- However, because the defendant would have served his sentence by the time any action was taken by the Court of Appeals, the defendant chose not to appeal.

## Procedural Concerns

- The first day introduction deadline has proven difficult for legislators who may not receive a request from their locality or a constituent until after the Session has started.
  - There is no cut-off time for receipt by the Division of Legislative Services of bill requests that require first-day introduction. Bill requests are received up until 5:00 p.m. and the bills must be filed with the Clerks' by 5:00 p.m.
- There is insufficient time for the Department of Planning and Budget (DPB) and the Virginia Criminal Sentencing Commission (VCSC) to prepare impact statements, especially during the session as amendments to bills are adopted.
- During the reconvened session, the Governor can propose an amendment to a bill, and the amended bill can be acted upon during the reconvened session. In this situation, no analysis of the offender population impact is required.

## Analytical Concerns

- The impact statements from DPB and VCSC have not always been in agreement. DPB relies on information provided by the Department of Corrections forecasting staff, while VCSC uses its own felony sentencing database.
  - In these cases, the subcommittees must decide which impact statement to use.
- Members of the Public Safety Subcommittees (of the Senate Finance and House Appropriations Committees) have raised questions about the meaning of impact statements that suggest an impact of \$62,500, for example.
  - This amount has sometimes been considered synonymous with a minimal impact of about 3 to 5 offenders.

- Members have also raised questions about the meaning of terms such as "undetermined," or "unavailable," or "\$0".
- Members have also expressed a lack of confidence in the ability of any forecasting process to predict the offender population ten years into the future.

### **Committee Workload Concerns**

- In view of the large numbers of bills on their dockets, the House and Senate Courts of Justice Committees have very little time to consider the merits of sentencing bills with offender population impact.
  - This is even more significant if the Courts committees are to meet the informal deadlines for rereferral requested in recent years by the Co-Chairmen of the Senate Finance and House Appropriations Committees.
- At the same time, the House Appropriations and Senate Finance Committees have a heavy workload of legislation to consider, and the referral of sentencing legislation adds to their workloads.
- Within the Subcommittees on Public Safety, there is a limited amount of time to review legislation, at the same time the subcommittees are reviewing the introduced budget.
  - There is even less time to review bills from the other chamber after cross-over.

## ISSUES AND RECOMMENDATIONS

### What is the legislative intent of § 30-19.1:4?

- Is it the intent of the General Assembly to balance sentencing policies with correctional resources? In other words, is the process intended to assure that legislative proposals affecting future prison population are considered in light of Virginia's ability to pay for additional prison beds?
- Or, is it the intent of the process to build up a cash reserve that will be available to support the operating expenses of new correctional facilities in the future?
- Or, are there other purposes intended by this process?
  - Comments from committee members have suggested it remains important for the Courts Committees to consider each bill on its merits, and recommend for re-referral only those bills the Courts Committees support.
  - Then, the role of the House Appropriations and Senate Finance Committees should be limited to consideration of fiscal impact only.
- **Recommendation.** The joint subcommittee finds that the intent of § 30-19.1:4 is primarily to encourage careful consideration of the offender population impact of proposed criminal sentencing legislation, so that the Commonwealth's sentencing policies are consistent with the projected resources available for adult and juvenile corrections.
  - The establishment of a special fund is a means to accomplish this end, not the end in itself. Therefore, the main purpose of this process need not be to build up a large fund balance.

## Should there be further limits on the time for introduction?

- Currently, the statutory filing deadline is the first day of the session, although this can be extended with approval.
  - This is similar to the requirement for claims and property tax exemption bills, and bills with local government expenditure impact.
  - Bills providing for sales tax exemptions are further limited to regular sessions of the General Assembly in even-numbered years.
- The statute currently provides an escape clause (in § 30-19.1:6) to permit consideration of bills introduced after the first day of the session, if requested by the Governor or in accordance with the rules of the General Assembly.
  - For claims and property tax exemption bills, the escape clause is limited to requests by the Governor.
- In practice, this leaves very little time for the preparation of the offender impact statements by DPB and VCSC.
- Should the statute be amended to require an earlier filing date to provide for additional time for analysis? And, should the escape clause be maintained in its present form?
- ***Recommendation.*** The joint subcommittee considered this issue and decided that additional restrictions should not be placed on the ability of members to introduce legislation. For this reason, the joint subcommittee does not recommend amending the statute to provide for an earlier filing date. The current escape clause should be maintained.

**Should there be specific deadlines established for re-referral of bills by the Courts of Justice Committees to the Senate Finance and House Appropriations Committees?**

- Over the past few years the Co-Chairmen of the Senate Finance and House Appropriations Committees have requested the Chairmen of the Senate and House Courts of Justice Committees to meet certain deadlines for rereferring bills with offender population impact.
- *Recommendation.* The joint subcommittee recommends that the process of having the committee chairmen informally agree to the deadlines each year be continued.

**Should the process be extended to reconvened sessions?**

- The statute does not provide for the preparation of impact statements for amendments proposed by the Governor during a reconvened session.
- Consequently, an amendment to a sentencing bill may be acted upon during a reconvened session without the benefit of a review of the impact of the legislation, as amended.
- *Recommendation.* The joint subcommittee finds that the General Assembly does not have the constitutional authority to imposed additional restrictions on the Governor by restricting his ability to introduce amendments during a reconvened session without the fiscal impact review. Therefore, no recommendation is made.

### **Should the scope of the process be expanded?**

- Currently, § 30-19.1:4 does not provide for comprehensive review of offender population impacts on all correctional facilities.
- The statute only provides for review of bills affecting the population of state correctional facilities (adult and juvenile).
- However, there is no provision for review of the impact of bills that affect local or regional jails, local or regional juvenile detention homes, or community corrections programs.
- Should the statute be amended to include review of legislation affecting the adult local responsible offender population, and the local or regional juvenile detention home population?
- The inclusion of these bills in the review process would greatly increase the workload of the House Appropriations and Senate Finance Committees.
- *Recommendation.* The joint subcommittee recommends that the scope of § 30-19.1:4 not be expanded at this time, due to the potential impact on committee workload. This question may be considered at a future time, as more data becomes available.

### **Should those bills that are included in the current scope of the process be analyzed to determine their impact on local facilities and programs?**

- Considering only those bills currently included in the process (i.e., those affecting the population of state correctional facilities, both adult and juvenile), the current process only requires consideration of the fiscal impact on state facilities.

- Frequently, the fiscal impact printed on the face of the bill is \$0, because there is no impact on state responsible population.
  - However, these bills often have significant impact on local facilities or community corrections programs.
  - Should the required analysis include these other costs?
- *Recommendation.* The joint subcommittee recommends that § 30-19.1:4 be amended to require that the fiscal impact analysis prepared on bills currently included in the process include an analysis of the impact on local and regional jails and juvenile detention facilities, as well as on state and local community corrections programs, effective July 1, 2002.

**Should the ten-year look-forward time frame be reduced?**

- Currently, the statute requires that an appropriation be made which is equal to the highest of the next ten years' projected operating costs resulting from the legislation.
- However, from a technical perspective, there is less confidence in the accuracy of the forecast beyond four to six years. Also, the normal horizon for capital outlay planning for new prison construction is four to six years.
- Should the statute be amended to reduce the time horizon to four to six years, for estimating the required appropriation?
- *Recommendation.* The joint subcommittee recommends that § 30-19.1:4 be amended to provide for a six-year look forward period.



### **Should there be one rather than two impact statements?**

- Currently, both the Department of Planning and Budget (DPB) and the Virginia Criminal Sentencing Commission (VCSC) prepare separate prison impact statements.
- DPB uses estimates prepared by the Department of Corrections, and the VCSC develops independent projections based on the data system developed in support of sentencing guidelines.
- *Recommendation.* The joint subcommittee recommends that § 30-19.1:4 be amended to require that one fiscal impact statement be prepared by the staff of the Virginia Criminal Sentencing Commission, for all adult sentencing changes. All agencies would be expected to provide necessary data.

### **How should the annual cost per inmate be determined?**

- The Department of Planning and Budget (DPB) uses a formula to specify the annual operating cost per inmate, for the purpose of calculating the required appropriation for the Corrections Special Reserve Fund.
  - The formula utilizes the most recent fiscal year's actual expenditures for the correctional facilities, correctional education, and a portion of the central office, divided by the average daily population for the same period.
- Should this formula continue to be used by the Sentencing Commission?
- *Recommendation.* The joint subcommittee recommends that § 30-19.1:4 be amended to direct that DPB provide the Sentencing Commission with an annual update of the operating cost per inmate, to be used by the Sentencing Commission in calculating the required appropriation to be printed on the face of the bill.

### **What if the population impact cannot be determined?**

- The Sentencing Commission usually includes NA ("Not Available") as the projected impact for any bills for which there is insufficient data to project an impact.
  - Up until now, in these cases DPB has occasionally assumed a minimum impact of 3-5 offenders, and included an estimate of \$62,500.
  - The Sentencing Commission has preferred to include "NA" rather than an estimate not based on actual data.
- Should the legislation address the process to be followed in those cases in which an accurate projection cannot be made?
- *Recommendation.* The joint subcommittee recommends that § 30-19.1:4 be amended to specify that the words: "Cannot be Determined" be printed on the face of any proposed bill for which the Sentencing Commission does not have sufficient information to project the offender population impact.

### **Who should prepare the statements for juvenile sentencing bills?**

- Fiscal impact statements for bills involving juvenile sentencing changes are currently prepared by the Department of Planning and Budget (DPB), in conjunction with the Department of Juvenile Justice (DJJ).
  - There are relatively few such bills each year.
- *Recommendation.* The joint subcommittee recommends that the current process be continued under which fiscal impact statements for juvenile sentencing changes would continue to be prepared by DPB in conjunction with DJJ.

**Should the permissible uses of the set-aside funds be expanded?**

- Currently, the statute requires that funds set aside in the Corrections Special Reserve Fund may only be used for operating expenses for correctional facilities or for community programs.
  - Also, the statute requires that these expenditures be consistent with the offender population projected as a result of each bill.
- Should the statute be amended to allow the funds to be used to support pre-planning or planning studies, which are normally required prior to approval of full funding for capital outlay projects?
- Also, should there be greater flexibility in the timing of the expenditures from the reserve fund?
- ***Recommendation.*** The joint subcommittee recommends that § 30-19.1:4 be amended:
  - To provide for expenditure of the special reserve funds for capital (but not operating) expenses, including the cost of pre-planning studies which may be required to initiate new projects; and,
  - To eliminate restrictions on the timing of the expenditures from the fund.

**Should there be a minimum threshold dollar amount below which the special fund deposit need not be required?**

- Currently, the statute requires that the impact of all bills be addressed through the required appropriation, even if the amount is very small.
  - For example, token amounts of \$62,500 are frequently printed on the face of bills that are expected to have a minimal prison bedspace impact.
- Should the statute be amended to provide that for bills with fiscal impacts under a certain threshold amount, no appropriation would be required?
- *Recommendation.* The joint subcommittee recommends that § 30-19.1:4 not be amended to provide that if the bill has an impact of fewer than 10 offenders, no appropriation would be required.

## **PROPOSED LEGISLATION**

SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

1 A BILL to amend and reenact § 30-19.1:4 of the Code of Virginia and to repeal § 30-19.1:5 of  
2 the Code of Virginia, relating to correctional impact statements.

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

4 **1. That § 30-19.1:4 of the Code of Virginia is amended and reenacted as follows:**

5 § 30-19.1:4. Increase in terms of imprisonment or commitment; fiscal impact  
6 statements; appropriations for operating costs.

7 ~~A. The Department of Planning and Budget, in conjunction with the Department of~~  
8 ~~Corrections, the Department of Juvenile Justice, and the~~ The Virginia Criminal Sentencing  
9 Commission, shall prepare a fiscal impact statement reflecting the operating costs attributable  
0 to and necessary appropriations for any bill which would result in a net increase in periods of  
1 imprisonment in state adult correctional facilities ~~or~~ The Department of Planning and Budget  
2 shall annually provide the Virginia Criminal Sentencing Commission with the operating cost per  
3 inmate.

4 B. The Department of Planning and Budget, in conjunction with the Department of  
5 Juvenile Justice shall prepare a fiscal impact statement reflecting the operating costs  
6 attributable to and necessary appropriations for any bill which would result in a net increase in  
7 periods of commitment to the custody of the Department of Juvenile Justice, ~~including,~~

8 C. The requirement for a fiscal impact statement includes but is not limited to, those  
9 bills which add new crimes for which imprisonment or commitment is authorized, increase the  
0 periods of imprisonment or commitment authorized for existing crimes, impose minimum or  
1 mandatory terms of imprisonment or commitment, or modify the law governing release of  
2 prisoners or juveniles in such a way that the time served in prison, or the time committed to the  
3 custody of the Department of Juvenile Justice will increase.

1 D. The fiscal impact statement of any bill introduced on or after July 1, 2002, that would  
2 result in a net increase in periods of imprisonment in state correctional facilities or periods of  
3 commitment to the custody of the Department of Juvenile Justice, shall include an analysis of  
4 the fiscal impact on local and regional jails, state and local community corrections programs  
5 and juvenile detention facilities.

6 E. The amount of the estimated appropriation reflected in the fiscal impact statement  
7 shall be printed on the face of each such bill, but shall not be codified. If the agency  
8 responsible for preparing the fiscal impact statement does not have sufficient information to  
9 project the impact, the fiscal impact statement shall state this and the words "Cannot be  
0 determined" shall be printed on the face of each such bill.

1 F. The fiscal impact statement shall include, but not be limited to, details as to any  
2 increase or decrease in the offender population. Statements prepared by the Virginia Criminal  
3 Sentencing Commission shall detail any necessary adjustments in guideline midpoints for the  
4 crime or crimes affected by the bill as well as adjustments in guideline midpoints for other  
5 crimes affected by the implementation of the bill which, in the opinion of the Commission, are  
6 necessary and appropriate.

7 G. The agency preparing the fiscal impact statement shall forward copies of such  
8 impact statements to the Clerk of the House of Delegates for transmittal to each patron of the  
9 legislation and to the chairman of each committee of the General Assembly to consider the  
0 legislation.

1 ~~B-H.~~ For each law becoming effective on or after July 1, 1994, enacted which results in  
2 a net increase in periods of imprisonment in state correctional facilities or for any law becoming  
3 effective on or after July 1, 1997, which results in a net increase in periods of commitment or  
4 the time committed to the custody of the Department of Juvenile Justice, a one-year  
5 appropriation shall be made from the general fund equal to the estimated increase in operating  
6 costs of such law, in current dollars, of the highest of the next ten six fiscal years following the  
7 effective date of the law. "Operating costs" means all costs other than capital outlay costs.

1        €. The Corrections Special Reserve Fund (the "Fund") is hereby established as a  
2 nonreverting special fund on the books of the Comptroller. The Fund shall consist of all  
3 moneys appropriated by the General Assembly under the provisions of this section and all  
4 interest thereon. Any moneys deposited in the Fund shall remain in the Fund at the end of the  
5 biennium. Moneys in the Fund shall be expended solely for ~~the purpose of providing for the~~  
6 ~~operations of these facilities where offenders are maintained, including community programs~~  
7 ~~which provide supervision or treatment of offenders~~ capital expenses, including the cost of  
8 planning or pre-planning studies which may be required to initiate capital outlay projects.  
9 ~~Moneys in the Fund shall not be appropriated for expenditure prior to the first year in which the~~  
0 ~~fiscal impact of any such bill is expected to occur. Such expenditures shall be consistent with~~  
1 ~~the annual inmate population increases projected as a result of the bill.~~

2        **2. That § 30-19.1:5 of the Code of Virginia is repealed.**

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