



COMMONWEALTH of VIRGINIA
Office of the Governor

Robert F. McDonnell
Governor

September 30, 2010

TO: The Honorable Robert F. McDonnell
Governor

The Honorable Lacey E. Putney
Chairman, House Appropriations Committee

The Honorable Charles J. Colgan, Sr.
Chairman, Senate Finance Committee

CC: The Honorable Ric Brown
Secretary of Finance

The Honorable Lisa Hicks-Thomas
Secretary of Administration

Pursuant to Item 377, Paragraph F of the 2010 Appropriations Act (Chapter 874, 2010 Acts of Assembly), the Secretaries of Finance, Administration, and I established a taskforce to examine the potential ramifications of changing the definition of state-responsible offenders from felons with sentences of one year or more to felons with sentences of two years or more.

Members for this taskforce include a Sheriff and a Superintendent of a regional jail, selected by their respective associations; as well as representatives of the Department of Corrections, Department of Criminal Justice Services, Department of Planning and Budget, Virginia Compensation Board, and the Senate Finance and House Appropriations Committees.

The diligent work of the taskforce is complete and, pursuant to the amendment noted above, this report is respectfully submitted for your review.

Please feel free to contact me should you have any questions regarding this report.

Sincerely,

A handwritten signature in black ink that reads "Marla Graff Decker". The signature is fluid and cursive, with a long horizontal stroke at the end.

Marla Graff Decker

Office of Public Safety



October 1, 2010

State-Responsible Offenders Taskforce Report

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Executive Summary

Section 53.1-20 of the Code of Virginia (§ 53.1-20) directs that all persons convicted of a felony and sentenced to incarceration for a **year or more** shall be transferred to the Department of Corrections. During the 2010 General Assembly, a budget amendment was introduced that would require persons convicted of felonies committed on or after January 1, 1995, and sentence to the Department of Corrections or sentenced to confinement in **jail for two years** or more, to be placed in the custody of the Department of Corrections.

Essentially, the introduced language adjusted the definition of “state-responsible” offenders from felons with sentences of one year or more to felons with sentences of two years or more. Governor McDonnell recommended a budget amendment to delay the change in the definition of state responsible inmates in order to evaluate the practical effect of the language.

The approved amendment, Item 377, Paragraph F of the 2010 Appropriation Act (Chapter 874, 2010 Acts of Assembly), directed the Secretaries of Public Safety, Finance and Administration to establish a task force to examine the ramifications of changing this definition regarding which offenders should be transferred from local and regional jails to the state correctional facilities. In addition to representatives of the affected state agencies, the task force included representatives of local and regional jails, local governments, and staff of the Senate Finance and House Appropriations Committees.

The task force met three times and gave thorough consideration of all of the issues related to this definition change. After completing its review, the task force recommends that there be no change in the current practice of offenders with a sentence of one year or more being eligible for transfer to the Department of Corrections. Virginia Code §53.1-20 should remain in its current form.

Composition of Task Force

The Secretary of Public Safety designated Banci Tewolde, Prisoner Re-entry Coordinator and Special Assistant to the Governor, to head the task force. Members of the task force included a Sheriff and a Superintendent of a regional jail as selected by their respective associations. Other members included:

The Honorable Beth Arthur—Sheriff, Arlington County
Gary Bass—Director, Division of Offender Management, Department of Corrections
Tony Casale—Department of Criminal Justice Services
Dan Catley—Department of Criminal Justice Services
John Crooks—Budget Analyst, Department of Planning and Budget
Robyn deSocio—Executive Director, Virginia Compensation Board
Michael Maul—Associate Director, Department of Planning and Budget
Richard Hall-Sizemore—Budget Analyst, Department of Planning and Budget
David Simons—Superintendent, Western Tidewater Regional Jail
Richard Hickman—Staff, Senate Finance Committee

History and Background

The Code of Virginia (§ 53.1-20) directs that all persons convicted of a felony and sentenced to incarceration for one year or more be housed in facilities operated by the Virginia Department of Corrections (DOC). The Code requires DOC to transfer such offenders to its facilities within 60 days of receiving the final court order. Offenders with felony convictions and a sentence of one year or more are referred to as “state responsible offenders.” State responsible offenders remaining in jail beyond the 60-day period allowed for DOC to take them into state custody are deemed “out of compliance.” For several years, due to insufficient bed capacity within DOC, the Appropriation Act has contained language overriding § 53.1-20. The language authorizes the DOC Director to receive offenders into state correctional facilities from local and regional jails “at such time as he determines that sufficient, secure, and appropriate housing is available.” (This language is contained in Item 380 D of the current Appropriation Act, Chapter 874 of the 2010 Acts of Assembly.)

Last year, the Compensation Board reimbursed localities at a higher amount (\$14 per day) for out of compliance offenders housed in local and regional jails than it did for regular state responsible offenders (\$8 per day). Beginning July 1, 2010, the reimbursement for any state responsible offender was changed to \$12 per day, regardless of status.

Issue Before the Task Force

The 2010 General Assembly included language in the final budget bill that would have changed the criteria for felony offenders that would have been transferred to DOC. Under that language, DOC would have been responsible for housing felony offenders with a sentence of two years or more, rather than one year or more. At the same time, the General Assembly proposed budget reductions for DOC of \$1.3 million in the first year of the biennium and \$10.9 million in the second year, which could include the closure of one or more correctional facilities. Although these two actions were not explicitly linked, it was understood by all involved that the change in the criterion for transferring state responsible inmates from jails would reduce the number of inmates that DOC would have to house, thereby reducing costs.

In the reconvened session, during his reconsideration of budget amendments, Governor McDonnell proposed restoring the \$1.3 million in the first year and deleting the language relating to transfer of state responsible inmates and substituting language establishing a task force to study the issue. The General Assembly agreed to these amendments to the budget language. The task force was established to study the proposed change in definition relating to state responsible offenders.

Findings of the Task Force

The task force members focused on the effects of changing the sentence criterion for transfer to DOC from “one year or more” to “two years or more.” The task force found the following:

Projected Bed Impact

The first year the change would go into effect (FY 2010), 998 beds would be shifted from DOC to local and regional jails. The number would increase slightly each year after that, reaching 1,035 in FY 2015. (This projection is based on the FY2011-2016 inmate forecast recently adopted.)

Fiscal Impact of Bed Shift

Localities

Based on the 2009 Jail Cost Report, the statewide average marginal cost of housing prisoners in local and regional jails is \$12.40 per day. (Marginal costs include food, medical, programs, transportation, and 25 percent of direct jail support costs). The state *per diem* payment of \$12 per day will almost cover the additional marginal cost for inmates shifted from DOC to jails because of the change in transfer criterion. However, the marginal cost will vary from jail to jail. Yet, depending on the number of additional state responsible offenders shifted to localities, some jails might have to hire additional deputies, which would increase the cost of housing these inmates. There is currently insufficient data to project the need for these additional deputies on either a statewide or a jail-by-jail basis.

State

At the state level, DOC would be able to cover the \$10.9 million deficit in its budget in FY 2012 by closing a medium-sized prison. The Compensation Board would need an additional \$4.4 million to cover the additional *per diem* costs.

Other Issues

Jails

With respect to jail bed capacity, the number of prisoners that local and regional jails can safely house is not easily determined. For example, there is an official rated capacity of jails. However, jails routinely house inmates in excess of that number. The Board of Corrections is currently attempting to ascertain actual jail capacity. However, it is clear that shifting the equivalent of 998 beds from DOC to jails will have the following effects:

- Overall system—Based on a commonly-accepted definition of overcapacity (150 percent of rated capacity), this shift would leave the overall system with a margin of only 2,000-2,500 beds. Spread across the Commonwealth, this margin is not a significant one. An increase in jail admissions over what is currently being projected, coupled with a decrease in the number of state responsible offenders transferred to DOC, could significantly tax the system.
- Some individual jails would experience significant overcrowding.

The change would also have an impact on medical costs. Clearly, having to house some state responsible offenders longer would likely result in additional medical costs for local and regional jails.

The task force also considered re-entry issues relating to a change in the definition. While offenders would be closer to home and have access to work-release, there are potential ramifications on successful re-entry of state responsible offenders. Jails are not designed to hold offenders for two years. Many have inadequate space for program. Additionally, there are often limited programs (substance abuse treatment, education, job skills, etc.). Finally, many local facilities have inadequate outdoor recreation.

State

Changing the criterion for transfer would not result in additional savings for DOC. Furthermore, as stated above, the Compensation Board will need an additional \$4.4 million to reimburse localities for housing more state responsible inmates.

Since it would involve inmates with relatively short sentences and, thus, most likely low-security inmates, the change in the transfer criterion would likely reduce the pool of DOC inmate resources for agribusiness and other work crews. Using a snapshot of the inmate population early in FY 2011, DOC estimated the following impacts:

- Work centers—149 fewer inmates. (Current work center population: 1,204)
- Field units—127 fewer inmates. (Current field unit population: 1,189)
- Capital construction unit—3 fewer inmates. (Current number of inmates assigned to CCU: 69)

Conclusion

The task force members recognize that a significant percentage of state responsible offenders with sentences of less than two years are now serving their full sentences in local and regional jails without ever being transferred to DOC facilities. The members also recognize that both state and local responsible populations have been decreasing over the past few years. Nevertheless, due to the uncertainties surrounding the inmate forecasts and the further burden

that changing the transfer criterion would put on local and regional jails, the members conclude that the criterion should not be changed. Leaving the criterion for transfer at one year or more, with DOC having the authority to leave some of those inmates in jails if it does not have sufficient capacity, provides the entire system with the flexibility it needs.