



VIRGINIA CRIMINAL SENTENCING COMMISSION



March 27, 2023

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.



Fiscal Impact Statements

§ 30-19.1:4

Law became
effective
July 1, 2000

- **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 (prisons).**

- **Requirement 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 affecting the time served by prisoners.**



Fiscal Impact Statements

§ 30-19.1:4

- **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.**

- **A six-year projection is required.**



Calculation of Fiscal Impact

- **Sentencing Commission staff analyze available data to estimate the number of offenders likely to be affected by the legislation and the impact on sentences and/or time served for those offenders.**
- **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.**



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.

STEP 1 Identify the highest single-year population increase during the six years following enactment

STEP 2 Multiply the population figure by the cost of holding a prison inmate for a year (operating costs, excluding capital costs).

For FY2022, this was \$48,958.

This amount must be printed on the face of the bill and a one-year appropriation in that amount 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.

However, language in the Appropriation Act specifies that:

If the Sentencing Commission does not have sufficient information to estimate the impact, the Commission must assign a minimum fiscal impact of \$50,000 to the bill.

This amount must be printed on the face of the bill.

The provisions of § 30-19.1:4, paragraph H, apply (requiring appropriation be made).

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.



Insufficient Information

If data do not contain sufficient detail to estimate the impact of the proposal, background statistics are provided to the extent possible.

Analysis:

Data are insufficient to identify the number of stolen catalytic converters removed from a motor vehicle that are sold, offered for sale or purchased. Thus, it is not known how many individuals would be convicted of a Class 6 felony due to the proposal. If the proposal were enacted, affected individuals may be sentenced similarly to those who are currently convicted of Class 6 felony larceny offenses under §§ 18.2-97, 18.2-102, 18.2-108.1, or 18.2-109. According to Sentencing Guidelines data for FY2021 and FY2022, 13.5% of offenders convicted of Class 6 felony larcenies received a state-responsible (prison) term with a median sentence of 1.6 years. Another 45.3% received a local-responsible (jail) term for which the median sentence was 3.0 months. The remaining 41.2% did not receive an active term of incarceration to serve after sentencing.



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 confined juvenile populations.

DJJ provides this information to the Sentencing Commission and a combined statement is submitted to the General Assembly.



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1642 Amendment in the Nature of a Substitute (Patron Prior to Substitute – Kilgore)

LD#: 23104469

Date: 01/13/2023

Topic: Felony homicide

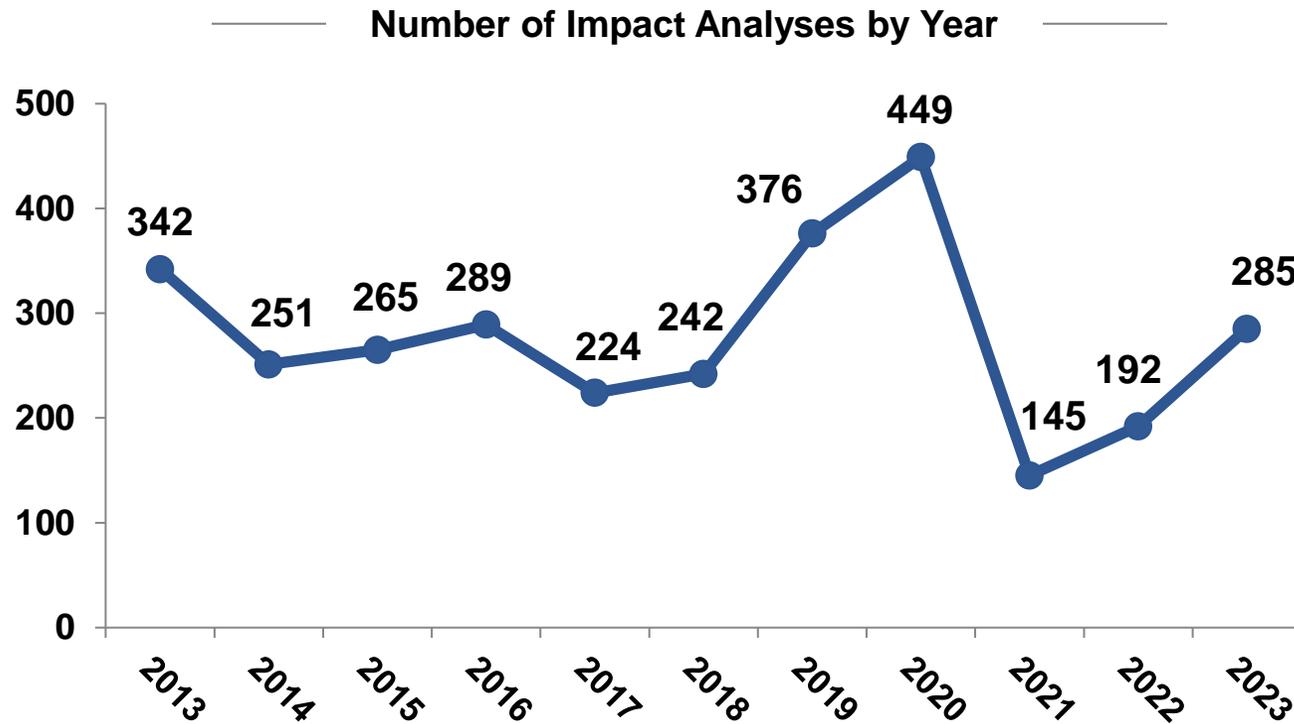
Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$255,020 (5 beds)*
 - **Local Adult Correctional Facilities:**
None (\$0)
 - **Adult Community Corrections Programs:**
Cannot be determined
- ➔
- **Juvenile Direct Care:**
Cannot be determined**
 - **Juvenile Detention Facilities:**
Cannot be determined**
- ** Provided by the Department of Juvenile Justice

* 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.



Impact Analyses Completed for 2013 - 2023 Sessions of the General Assembly



For the 2023 General Assembly, Commission staff also completed 21 **ad hoc analyses** requested by legislators, Finance/Appropriations Committee staff, the Department of Planning & Budget, or other state agencies.

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



2022 General Assembly Types of Legislative Changes

Type of Legislative Change	Percent
Expansion or Clarification of Crime	91%
New Crime	54%
Misdemeanor to Felony	8%
Increase Felony Penalty	9%
Mandatory Minimum	7%
Other	31%

285 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/Weapons (49 analyses)**
- **Sex Offenders and Offenses (29 analyses)**
- **Drugs – Marijuana or Schedule I/II drugs (26 analyses)**
- **Larceny/Fraud/Vandalism (26 analyses)**
- **Murder/Homicide (19 analyses)**
- **Abortion (18 analyses)**
- **Professions related (15 analyses)**
- **Terrorism (13 analyses)**
- **Election (8 analyses)**
- **Gangs (8 analyses)**
- **Protective Orders (8 analyses)**
- **Hate Crimes (7 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 2023 Session, JLARC was not asked to review any of the Commission's fiscal impact statements.**





**Legislation Relating
to the Sentencing Commission**



Recommendations in the *2022 Annual Report*

No legislation was introduced during the 2023 General Assembly session to counteract the recommendations contained in the Commission's *2022 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.



Requested by the
Sentencing Commission

HB 2019

Discretionary sentencing guidelines; review, deferred disposition.

Introduced by: Les R. Adams

SUMMARY AS PASSED:

Clarifies that Guidelines must be reviewed even in cases in which the court plans to defer disposition and it specifies that the circuit court clerks must submit Guidelines forms to the Commission in cases resulting in a deferred disposition. The *Code* currently specifies that Guidelines and court orders be submitted “following the entry of a final order of conviction and sentence” (§ 19.2-298.01(E)).

HISTORY

01/10/23 House: Referred to Committee for Courts of Justice

01/23/23 House: Courts of Justice Subcommittee recommends reporting (7-Y 0-N)

01/27/23 House: Reported from Courts of Justice (20-Y 0-N)

02/02/23 House: VOTE: Block Vote Passage (100-Y 0-N)

02/03/23 Senate: Referred to Committee on the Judiciary

02/13/23 Senate: Reported from Judiciary (14-Y 1-N)

02/15/23 Senate: Passed Senate (39-Y 1-N)

03/02/23 Governor: Governor's Action Deadline 11:59 p.m., March 27, 2023



HB 2019

Discretionary sentencing guidelines; review, deferred disposition.

Introduced by: Les R. Adams

PROPOSED AMENDMENT

After line 48, engrossed

insert

H. In any felony case, other than Class 1 felonies, in which the court rejects a plea agreement, the court shall file with the record of the case a written explanation for rejecting such plea agreement. The clerk of the circuit court in which such felony case was pending shall forward such written explanation to the Commission within five days following the entry of a final order of conviction and sentence in the felony case, or following a deferred disposition as authorized by § 18.2-251, 18.2-258.1, 19.2-298.02, or 19.2-303.6.

OUTCOME

Withdrawn



SB 939

Discretionary sentencing guidelines; written explanation, appeal.

Introduced by: John S. Edwards

SUMMARY AS INTRODUCED:

For sentencing hearings conducted on or after July 1, 2023, the bill specifies that:

- 1) The written explanation for departing from the Guidelines must adequately explain the sentence imposed to promote fair sentencing.
- 2) A court's ruling on a defendant's objection to the calculation of the discretionary sentencing guidelines would be reviewable upon appeal.
- 3) Failure to follow any of the required sentencing provisions, including the failure to provide a written explanation that adequately explains the sentence, shall be reviewable on appeal or may be the basis of any other post-conviction relief.

HISTORY

02/01/23 Senate: Reported from Judiciary Committee (9-Y 4-N)

02/07/23 Senate: Passed Senate (22-Y 18-N)

02/09/23 House: Referred to Committee for Courts of Justice

02/13/23 House: Courts of Justice Sub recommends passing by indefinitely (5-Y 3-N)

02/22/23 House: Left in Courts of Justice



See also
HB 1914 (Hope)

SB 1335

Fiscal impact statements; formula for estimated appropriations.

Introduced by: Joseph D. Morrissey

SUMMARY AS INTRODUCED:

Establishes a formula for determining the estimated appropriations for a fiscal impact statement for any bill that adds a new felony. The estimated appropriation must be determined by multiplying twice the DOC per capita cost of housing inmates.

Specifies that the estimated increase in persons convicted of and imprisoned for the proposed new felony must be calculated by using a fraction the numerator of which is 1 and the denominator is n , multiplied by t (i.e., $(1/n)*t$), where “ n ” equals the total number of felonies within the relevant class and “ t ” is the total number of persons convicted of and imprisoned for any felony within the relevant class during the fiscal year previous to the General Assembly. **In essence, the formula generates the average number of prison admissions per offense defined in a particular class of felony.**

HISTORY

01/11/23 Senate: Referred to Committee on Finance and Appropriations

02/01/23 Senate: Passed by indefinitely in Finance and Appropriations
with **letter to the VCSC** (15-Y 1-N)



See also
HB 1914 (Hope)

SB 1335

Fiscal impact statements; formula for estimated appropriations.

Introduced by: Joseph D. Morrissey

VCSC COMMENTS INCLUDED THE FOLLOWING:

- Basis for “multiplying twice” the DOC per capita cost of housing inmates is unclear.
- Certain types of offenses may dominate a felony class and **would not be representative of all offenses in the same class.**
- Not all existing or proposed felonies fit within the felony classes established in the *Code of Virginia* (Class 1 through Class 6 felonies are defined in § 18.2-10). **Review found that 20% of felonies are “unclassified”.**
- Within the same felony class, certain felony offenses result in a large number of prison admissions while other felony offenses in the same class may result in fewer prison admissions. **Using an average rate or prison admissions may result in an over- or under-estimation of the impact.**
- Bill **does not address the different rates of sentence credits** that may be earned by convicted felons, which vary based on the specific offense committed (length-of-stay).
- Bills requires a different per capital cost than currently required by *Code*.



Legislation Relating to Sentencing



HB 2013

Probation, revocation, and suspension of sentence.

Introduced by: Les R. Adams

SUMMARY AS PASSED HOUSE:

Changes the definition of a technical violation by including good behavior violations that did not result in criminal convictions and *excluding violations related to the possession or distribution of controlled substances, use or possession of a firearm, or absconding. It also clarifies that any specific or special term imposed by the court in a court order is not a technical violation.*

Upon a first technical violation, if the court originally suspended the imposition of sentence, the court must revoke such suspension and again suspend all of this sentence and, upon a second or subsequent violation, the court may pronounce whatever sentence might have been originally imposed.

The court may fix the period of probation and the period of suspension for up to two years for an offense punishable as a Class 1 or Class 2 misdemeanor.

The offense of crimes against nature is added 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 period of suspension be equal to the statutory maximum for the offense.

Repeals § 19.2-306.1 of the *Code of Virginia*.



HB 2013

Probation, revocation, and suspension of sentence.

Introduced by: Les R. Adams

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

HISTORY

01/25/23 House: Courts of Justice Subcommittee recommends reporting (5-Y 3-N)

02/03/23 House: Reported from Courts of Justice (11-Y 9-N)

02/07/23 House: VOTE: Passage (52-Y 47-N)

02/15/23 Senate: Reported from Judiciary with substitute (14-Y 0-N 1-A)

02/16/23 Senate: Reported from Finance and Appropriations (9-Y 7-N)

02/22/23 Senate: Motion to recommit to committee agreed to (22-Y 18-N)

02/22/23 Senate: Recommitted to Judiciary

03/02/23 Senate: Left in Judiciary



HB 2360

Firearms; use or display in felony, increases mandatory minimum sentences.

Introduced by: Michael J. Webert

SUMMARY AS INTRODUCED:

Increases from 3 to 5 years for a first offense and from 5 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. The bill also increases the punishment and mandatory minimums for other firearm offenses defined in § 18.2-308.1 (school property) and § 18.2-308.2 (felon in possession).

VCSC FISCAL IMPACT: \$50,681,842 (1,035 beds)

HISTORY

01/25/23 House: Subcommittee recommends reporting with substitute (4-Y 3-N)

01/27/23 House: Reported from Courts of Justice with substitute (11-Y 9-N)

01/27/23 House: Referred to Committee on Appropriations

01/30/23 House: Reported from Appropriations (12-Y 10-N)

02/06/23 House: VOTE: Passage (52-Y 48-N)

02/15/23 ***Senate: Passed by indefinitely in Judiciary (9-Y 6-N)***



**Legislation Relating
to Parole or Time Served**



See also
SB 1542 (Stuart)

HB 1603

Enhanced earned sentence credits; firearm-related offense, felony conviction during confinement.

Introduced by: Scott A. Wyatt

SUMMARY AS PASSED HOUSE:

Removes any person convicted of a specified felony firearm offense from eligibility for the enhanced earned sentence credits and reduces earned sentence credits to zero for a person who receives a felony conviction for an offense that occurred during confinement.

VCSC FISCAL IMPACT: \$108,686,760 (2,220 beds)

HISTORY

01/27/23 House: Courts of Justice Sub recommends reporting with substitute (5-Y 3-N)

02/03/23 House: Reported from Courts of Justice with substitute (11-Y 9-N)

02/07/23 House: VOTE: Passage (52-Y 47-N)

02/08/23 Senate: Referred to Committee on the Judiciary

02/15/23 ***Senate: Passed by indefinitely in Judiciary (9-Y 6-N)***



**Legislation Creating New Crimes or
Modifying Existing Crimes**

Legislation Passed by the General Assembly

**Signed
by Gov.**

**Signed
by Gov.**

Bill	Description	Penalty
HB 1478 (Ballard) / SB 1207 (McDougle)	Expands the definition of "act of violence" for the purposes of gang offenses to include all felonies in § 17.1-805(C); increases various penalties for gang crimes	Gang offense: Class 5 increased to Class 4 felony
HB 1572 (Walker) / SB 1291 (Deeds)	Unlawful for any person to knowingly report, or cause another to report in reliance on intentionally false information provided by such person, a false emergency communication to any emergency personnel that results in an emergency response	Class 1 misdemeanor; Class 6 felony if serious bodily injury; Class 5 felony if death
HB 1636 (Bulova)	Clarifies that the term "willful act or willful omission" includes operating or engaging in the conduct of a child day program or family day system without first obtaining a license	Class 4 felony
HB 1673 (Bell) / SB 1156 (Boysko)	Suffocation by blocking or obstructing the airway of another	Class 6 felony
HB 1682 (Wyatt) / Also SB 1188 (Reeves)	Includes fentanyl as a weapon of terrorism	Class 4 felony
HB 1699 (Cherry)	Creates a criminal penalty for buying, selling, or otherwise transferring custody of a minor for money or other thing of value	Class 5 felony

**Impact:
\$437,679**



Legislation Passed by the General Assembly

Bill	Description	Penalty
HB 1885 (Byron) / Also SB 1396 (Stuart)	Establishes crime of organized retail theft	Class 3 felony
HB 1892 (Ballard)	Elevates the criminal penalty for abduction of a minor, with exceptions for family or household members who have been given visitation or custody of the child	Class 2 Felony
HB 1897 (Bell) / SB 1532 (Deeds)	Petitioner can request a hearing to extend a permanent protective order and judge may continue protective order until the hearing	
HB 1931 (Durant) / SB 973 (Peake)	Creates a criminal penalty for any civilly-committed sexually violent predator placed on conditional release who tampers with or in any way attempts to circumvent the operation of his GPS tracking device	Class 6 felony
HB 2024 (Leftwich) / SB 1310 (Deeds)	Adds active or retired federal or Virginia justices, judges, and magistrates to the list of people for which an enhanced punishment applies for the crime of using such person's identity with the intent to coerce, intimidate, or harass	Class 6 felony with 6-month mandatory minimum



Legislation Passed by the General Assembly

**Signed
by Gov.**

Bill	Description	Penalty
HB 2132 (Wilt) / SB 1145 (McPike)	Creates a criminal penalty for any person who knowingly and intentionally excavates after being notified that such excavation constitutes an immediate threat to safety or property	Class 6 felony
HB 2166 (Williams) / SB 896 (McDougle)	Expands individuals who may be subject to racketeering charges to include any individuals who commit RICO violations at the direction of an organizer, supervisor or manager of an enterprise Includes petit larceny as racketeering activity	1 st offense punishable by 5-40 years; 2 nd offense is Class 2 felony
HB 2372 (Wyatt) / SB 1135 (McDougle)	Unlawful possession of, purchase or sale of catalytic converter	Class 6 felony
HB 2398 (Bell)	Defines crime of sexual extortion: malicious dissemination or threat to disseminate images of individual in state of undress to accomplish certain sexual offenses	Class 5 felony, or felony punishable by 1-20 years if victim is minor
HB 2400 (Herring) / SB 1402 (Surovell)	Repeals conflicting provisions and amends various statutes to better facilitate the new electronic processes for expungement and sealing of criminal history records (effective July 2025); does not expand or reduce the availability of expungement or sealing in Virginia	





General Assembly website:

<http://viriniageneralassembly.gov/>