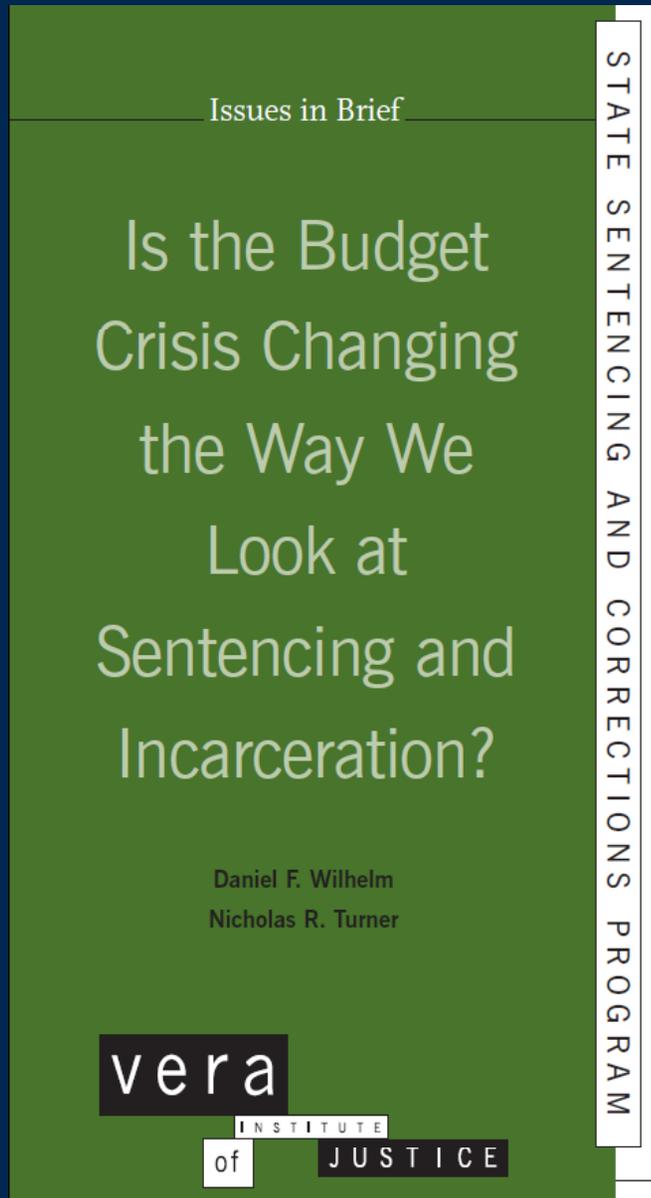




*Fiscal Impact Analysis
in Virginia*

**Presentation at the
NASC 2009 Annual Conference**

**Meredith Farrar-Owens
Virginia Criminal Sentencing Commission**



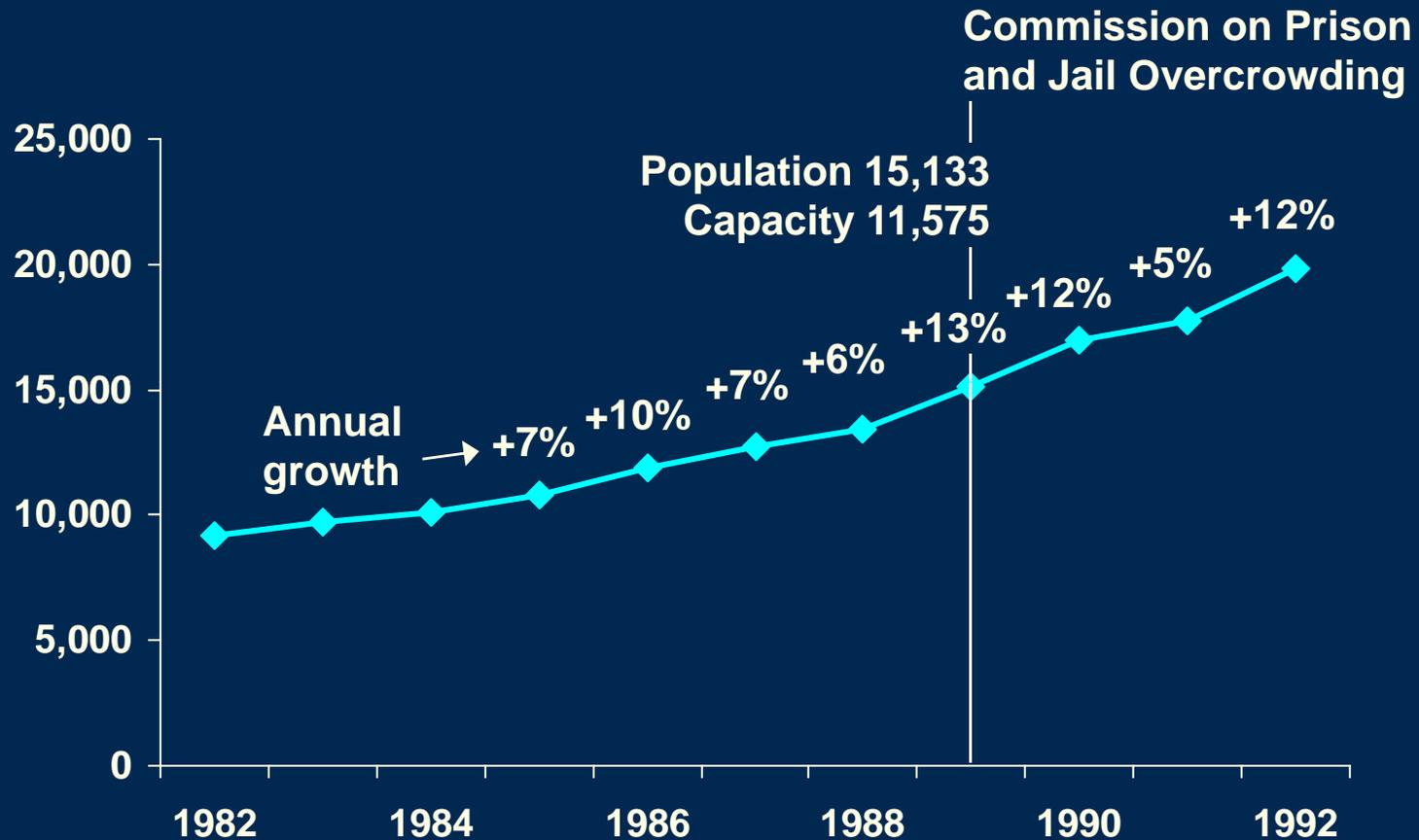
June 2002

Fiscal Notes

“ Many states require fiscal notes to be completed before a legislature votes on a bill. The power and effect of the notes vary dramatically from state to state, however.

Virginia, for one, has made the fiscal note requirement a particularly muscular mechanism to limit the ability of legislators to make ad hoc alterations to sentencing structures. ”

State-Responsible Inmate Population, 1982 - 1992



Data include state inmates in prison facilities and those in local/regional jails.



Virginia Criminal Sentencing Commission

Commission on Prison and Jail Overcrowding, 1989

Selected Findings

- **The number of inmates in state prisons grew by 41% between 1983 to 1989. By 1989, over 3,000 state inmates were housed in local jails.**
- **The total jail population (including state inmates) more than doubled between 1983 and 1989, while jail capacity grew by only 24%.**
- **In 1987-1989, the state approved \$232 million for construction to increase prison capacity; however, this would not be enough to keep pace with growing inmate population.**
- **Seventeen laws passed between 1980 and 1989 contributed to the increase in Virginia's prison and jail populations.**



Commission on Prison and Jail Overcrowding, 1989

- The final report included 55 recommendations to address prison and jail overcrowding.

Specifically:

- “ The Department of Corrections... should develop a 10-year corrections Master Plan, composed of two parts: state facility and local facility needs. ”
- “ 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. ”



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2002

Commission on Prison and Jail Overcrowding convened

Reform legislation adopted:
parole abolished
truth-in-sentencing enacted
Sentencing Commission created

Legislation passed requiring fiscal impact statements and associated appropriation for all justice bills - prepared by DPB in conjunction with DOC and legislative staff

Fiscal impact law amended:
Sentencing Commission designated to assist / Impact on state juvenile facilities added / Corrections Special Reserve Fund created

Sentencing Commission given sole statutory responsibility for preparing fiscal impact statements / Impact on jails, community corrections, and juvenile detention facilities added / Necessary guidelines adjustments must be specified



Sentencing Commission Duties (defined in § 17.1-803)

- **Develop, maintain and modify discretionary sentencing guidelines, reflective of historical practices, for felony crimes**
- **Develop an offender risk assessment instrument, based on a study of Virginia felons, that is predictive of the relative risk that a felon will become a threat to public safety**
- **Apply the risk assessment instrument to non-violent felons and determine, with due regard for public safety, the feasibility of placing 25% in alternative sanctions**
- **Monitor felony sentencing practices and maintain data**
- **Monitor crime and criminal justice trends and make recommendations regarding capacity and resource needs**
- **Study felony statutes in the context of judge and jury sentencing patterns as they evolve after January 1, 1995**



Virginia's Fiscal Impact Statements

§ 30-19.1:4 (A, B)

- **Criminal Sentencing Commission shall:**

Prepare a fiscal impact statement reflecting the operating costs attributable to and necessary appropriations for any bill that would result in a net increase in the number of inmates in state adult correctional facilities

- **Department of Planning and Budget shall:**

Provide the Sentencing Commission with the annual operating cost per inmate

Prepare a fiscal impact statement, in conjunction with the Department of Juvenile Justice, for any bill that would result in a net increase in periods of commitment in state juvenile facilities



Virginia's Fiscal Impact Statements

§ 30-19.1:4 (C)

◀ The requirement for a fiscal impact statement includes, but is not limited to, those bills that:

Add new crimes for which imprisonment or commitment is authorized ▶

Increase the periods of imprisonment or commitment authorized for existing crimes ▶

Impose minimum or mandatory minimum terms of imprisonment or commitment ▶

Modify the law governing release of prisoners or juveniles in any way that increases ▶



Virginia's Fiscal Impact Statements § 30-19.1:4 (D, F)

◀ The fiscal impact statement of any bill introduced on or after July 1, 2002, that would result in a net increase in the number of offenders in state facilities must include an analysis of the fiscal impact on:

Local and regional jails ▶

State probation services ▶

Local pretrial and probation services agencies ▶

Juvenile detention facilities ▶

And the statement must detail any necessary adjustments in guideline midpoints for the crime(s) affected by the bill



Virginia's Fiscal Impact Statements § 30-19.1:4 (E)

The amount of the estimated appropriation reflected in the fiscal impact statement must be printed on the face of each such bill, but shall not be codified

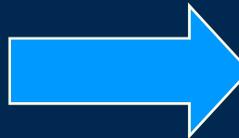
If the agency preparing the fiscal impact statement does not have sufficient information to project the impact, the fiscal impact statement shall state this, and the words "Cannot be determined" shall be printed on the face of the bill



Virginia's Fiscal Impact Statements § 30-19.1:4 (H)

For each law enacted that results in a net increase in the number of offenders in state facilities, a one-year appropriation must be made from the general fund equal to the estimated increase in annual operating costs associated with the law

The largest increase in annual operating costs during the subsequent six years must be used



Estimated Increase in Operating Costs

FY2010	\$272,940
FY2011	\$436,704
FY2012	\$491,292
FY2013	\$499,480
FY2014	\$503,574
FY2015	\$505,619



097784724

HOUSE BILL NO. 1862

Offered January 14, 2009

Prefiled January 12, 2009

A BILL to amend and reenact §§ 9.1-902 and 18.2-472.1 of the Code of Virginia, relating to sex offender registry; penalties.

 Patron—Shannon

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 9.1-902 and 18.2-472.1 of the Code of Virginia are amended and reenacted as follows:**

§ 9.1-902. Offenses requiring registration.

A. For purposes of this chapter:

"Offense for which registration is required" includes:

1. Any offense listed in subsection B;

2. Criminal homicide;

3. Murder;

4. A sexually violent offense;

5. Any offense similar to those listed in subdivisions 1 through 4 under the laws of any foreign country or any political subdivision thereof, the United States or any political subdivision thereof; and

107 2. That the provisions of this act may result in a net increase in periods of imprisonment or
108 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at
109 least \$505,619 for periods of imprisonment in state adult correctional facilities and cannot be
110 determined for periods of commitment to the custody of the Department of Juvenile Justice.

subsection C of § 18.2-67.5 or (iv) § 18.2-386.1.

If the offense was committed on or after July 1, 2006, § 18.2-91 with the intent to commit any felony offense listed in this section; subsection A of § 18.2-374.1:1; or a felony under § 18.2-67.5:1.

2. Where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection A of § 18.2-47, clause (i) of § 18.2-48, § 18.2-67.4, subsection C of § 18.2-67.5, § 18.2-361, or 18.2-366.

3. § 18.2-370.6.

C. "Criminal homicide" means a homicide in conjunction with a violation of, attempted violation of, or conspiracy to violate clause (i) of § 18.2-371 or § 18.2-371.1, when the offenses arise out of the same incident.

D. "Murder" means a violation of, attempted violation of, or conspiracy to violate § 18.2-31 or § 18.2-32 where the victim is (i) under 15 years of age or (ii) where the victim is at least 15 years of age but under 18 years of age and the murder is related to an offense listed in this section.

E. "Sexually violent offense" means a violation of, attempted violation of, or conspiracy to violate:

1. Clause (ii) and (iii) of § 18.2-48, § 18.2-61, subsection A of § 18.2-63 where the perpetrator is more than five years older than the victim, § 18.2-67.1, § 18.2-67.2, § 18.2-67.3, § 18.2-67.4 where the perpetrator is 18 years of age or older and the victim is under the age of six, subsections A and B of § 18.2-67.5, § 18.2-370, or § 18.2-370.1 or § 18.2-374.1; or

2. § 18.2-63, § 18.2-64.1, former § 18.2-67.2:1, § 18.2-90 with the intent to commit rape or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection A of § 18.2-47, § 18.2-67.4, subsection C of § 18.2-67.5, clause (i) of § 18.2-48, § 18.2-361, § 18.2-366 or subsection C of § 18.2-374.1:1. An offense listed under this subdivision shall be deemed a sexually violent offense only if the person has been convicted or adjudicated delinquent of any two or more such offenses, provided that person had been at liberty between such convictions or adjudications;

3. If the offense was committed on or after July 1, 2006, § 18.2-91 with the intent to commit any felony offense listed in this section. An offense listed under this subdivision shall be deemed a sexually violent offense only if the person has been convicted or adjudicated delinquent of any two or more such offenses, provided that the person had been at liberty between such convictions or adjudications; or

4. Chapter 117 (18 U.S.C. § 2421 et seq.) of Title 18 of the United States Code or sex trafficking (as

INTRODUCED

Virginia's Fiscal Impact Statements

§ 30-19.1:4 (I)

- **The Corrections Special Reserve Fund consists of all moneys appropriated by the General Assembly under the provisions of this section and all interest thereon**
- **Any moneys deposited in the Fund shall remain in the Fund at the end of the biennium**
- **Moneys in the Fund shall be expended solely for capital expenses, including the cost of planning or preplanning studies that may be required to initiate capital outlay projects**



Other Legislative Impact Analysis

- **Additional impact analyses may be conducted at the request of:**
 - **House Appropriations Committee staff**
 - **Senate Finance Committee staff**
 - **Department of Planning and Budget staff**



Fiscal Impact Statements Prepared 2002 – 2009 General Assemblies



Fiscal Impact Statements Prepared for the 2009 General Assembly (117 Statements)

Type of Proposed Change	% of Statements
Expansion or Clarification of Crime	60.7%
New Crime	32.5%
Mandatory Minimums	8.5%
Misdemeanor to Felony	6.0%
Increase Misdemeanor Penalty	1.7%
Death Penalty	0.8%

Percentages do not add to 100% as 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 adopted.



§ 30-19.1:4 (E)

If the agency preparing the fiscal impact statement does not have sufficient information to project the impact, the fiscal impact statement shall state this, and the words "Cannot be determined" shall be printed on the face of the bill



**Without a specific dollar amount,
no appropriation is required**



2009 General Assembly

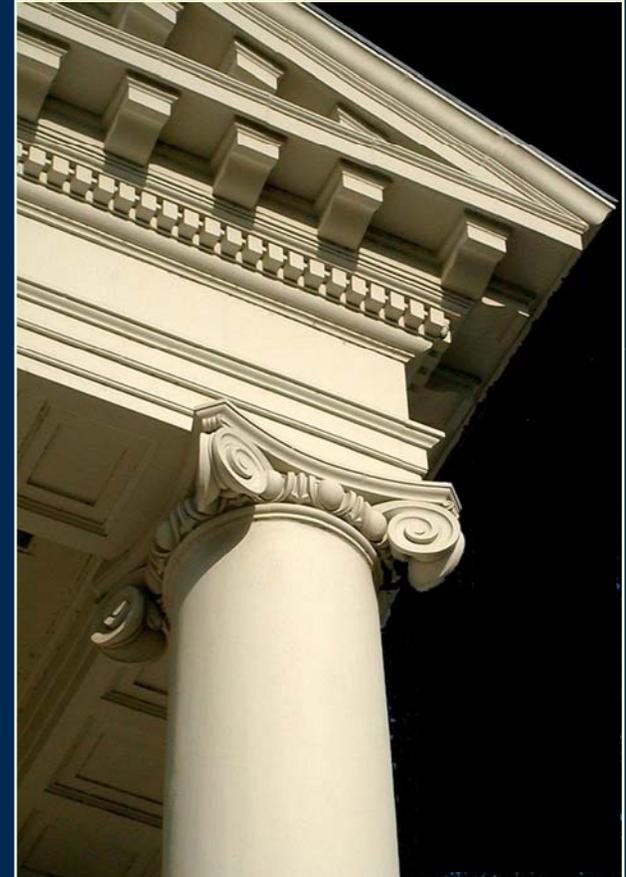
New language pertaining to fiscal impact statements was proposed by the Governor

The new language was inserted into the state's budget bill

The statute (§ 30-19.1:4) was not amended

The House of Delegates and the Senate left the new language in the budget bill

Budget language takes precedence over any statute



2009 BUDGET (APPROVED)

Virginia Criminal Sentencing Commission (160)

48. Adjudicatory Research, Planning, and Coordination

Authority: Title 17.1, Chapter 8, Code of Virginia.

- A. 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.*



Beginning 2010

If the Sentencing Commission does not have sufficient information to project the impact of a bill, it must assign \$50,000 as the amount on the fiscal impact statement

The provisions of § 30-19.1:4(H) apply and an appropriation must be made from the general fund to the Corrections Special Reserve Fund

