



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2033

(Patrons – Scott et al.)

Date Submitted: 11/22/02

LD #: 03-1645928

Topic: Brandishing a firearm during a public meeting

Proposed Change:

This proposal amends §18.2-282 to increase the penalty for brandishing a firearm in a public facility during a government meeting from a Class 1 misdemeanor to a Class 6 felony. This section shall not apply to any person engaged in excusable or justifiable self-defense.

Currently, it is a Class 1 misdemeanor to brandish a firearm in such a way as to induce fear in another, but it is raised to a Class 6 felony if the violation occurs on school property or within 1,000 feet of a school. Under current *Code*, a third or subsequent conviction for brandishing a firearm in violation of §18.2-282 is also a Class 6 felony.

Current Practice:

Based on fiscal year (FY) 2001 and FY2002 Local Inmate Data System (LIDS) data, 434 offenders held pre- or post-trial in jail were convicted of misdemeanor brandishing a firearm under §18.2-282. Of those convicted, 30 offenders (7%) were sentenced to probation, while 400 (92%) received local-responsible (jail) terms, with a median sentence of 1.4 months (see *Background Sentencing Information* below). Four offenders (1%), convicted of additional charges, received state-responsible (prison) terms, with a median sentence of 2.5 years.

According to FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, there were three felony convictions under §18.2-282 as the primary (most serious) offense in a sentencing event. All of these involved brandishing a firearm on or within 1,000 feet of school property. One offender (33%) was sentenced to probation, while the other two offenders (67%) received local-responsible (jail) sentences of three and six months. There were no third or subsequent convictions for brandishing a firearm as the primary offense in a sentencing event.

Convictions under the current §18.2-282 are not covered by the guidelines as the primary offense but would augment the guidelines recommendation if a covered offense is the most serious at conviction.

Background Sentencing Information

Misdemeanor Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Local-Responsible Sentence
Brandishing a firearm (§18.2-282)	434	7%	92%	1%	1.4 months

Note: Includes only convictions of those held in the local jail pretrial or sentenced to serve time post-trial.
Data Source: FY2001 and FY2002 Local Inmate Data System (LIDS) database

Felony Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median State-Responsible Sentence
Brandishing a firearm on or within 1,000 feet of school property (§18.2-282)	3	33%	67%	0%	NA

Data Source: FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) database.

Impact of Proposed Legislation:

The proposed legislation elevates certain misdemeanor offenses under the current §18.2-282 to the felony penalty level. Specifically, offenders convicted of brandishing a firearm during a government meeting in a public facility could receive state-responsible (prison) rather than local-responsible (jail) sentences. The proposal is expected to increase the need for state-responsible (prison) beds, but this increase cannot be quantified with existing data. No current criminal justice database maintains detailed information concerning the location and circumstances surrounding misdemeanor violations of this section. There may be a corresponding decrease in the need for local-responsible (jail) bed space, as offenders move from local to state control. No changes to the sentencing guidelines would be necessary under the proposal.

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 and \$0 for periods of commitment to the custody of the Department of Juvenile Justice.