



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 838

(Patron – Thomas)

Date Submitted: 01/09/02

LD #: 02-4982956

Topic: Use or display of firearm in committing a felony

Proposed Change:

Amends §18.2-53.1 to specify that the mandatory term of imprisonment for using a firearm in the commission of a felony must run consecutively to any punishment received for any other charge or offense.

Current Practice:

Currently, §18.2-53.1 makes it illegal to use, attempt to use, or to display in a threatening manner a firearm of any sort while committing or attempting to commit any of a specific list of violent felonies. The first conviction carries a three-year term of imprisonment, while a second or subsequent conviction carries a five-year term. These terms of imprisonment are not to be suspended in whole or part by the judge, and are to be run consecutive with any punishment received for the primary or triggering felony. The current statute does not specify that sentences for multiple convictions under this statute must be run consecutively to each other.

According to calendar year (CY) 1999 and 2000 Pre/Post-Sentence Investigation (PSI) data, there were five convictions under §18.2-53.1 as the primary (most serious) offense in a sentencing event. Of these, four were convicted of a first offense, and one was convicted of a second or subsequent offense. However, convictions under §18.2-53.1 were meant to be in concert with a more serious offense. For the same two years, there were 981 convictions where the use of a firearm offense was an additional offense in the case. Of those convicted under §18.2-53.1, nearly 97% were sentenced to a state-responsible (prison) term with a median sentence of 11 years.

Use or display of a firearm in the commission of a felony is covered by the sentencing guidelines. When this offense is the primary (most serious) offense in the sentencing event, the triggering offense has not been part of the sentencing. The baseline recommendation is three years for a first offense and five years for a second or subsequent offense.

Impact of Proposed Legislation:

The proposed legislation changes how a judge may apply an existing mandatory minimum sentence. It makes it explicit that the mandatory minimum term specified in §18.2-53.1 must be consecutive to any other sentence the offender may receive. The proposal is expected to have an impact on state-responsible (prison) bed space needs. Under the scenario that all sentences under §18.2-53.1 will be run consecutively to each other, the net high state-responsible impact would be 70 beds over the next six years.

Estimated Six-Year Impact in State-Responsible (Prison) Beds

| FY03 | FY04 | FY05 | FY06 | FY07 | FY08 |
|------|------|------|------|------|------|
| 14 | 35 | 49 | 56 | 64 | 70 |

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$1,642,620 for periods of imprisonment in state adult correctional facilities and \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on §53.1-20 as analyzed for the Secretary's Committee on Inmate Forecasting in 2001.
2. New cases representing state-responsible sentences were based on the admissions forecast as approved by the Secretary's Committee on Inmate Forecasting in August 2001.

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2002, is phased in to account for case processing time.
2. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2000. For violent offenses, this rate was 8.8%.
3. Sentences for all persons affected under the proposed legislation were adjusted to be equal to the mandatory minimum as specified under the proposed §18.2-53.1 (treating the sentences for multiple counts as consecutive to each other), unless the effective sentence (imposed minus suspended time) already exceeded the mandatory minimum.