



## Impact Analysis on Proposed Legislation

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### *Virginia Criminal Sentencing Commission*

### **House Bill No. 167**

*(Patron – Albo)*

**Date Submitted:** 12/19/03

**LD #:** 04-7653204

**Topic:** Concealed weapons

#### **Proposed Change:**

The proposal amends § 18.2-308 by adding machetes to the list of weapons that are illegal to carry concealed from view. Except as provided, it is a Class 1 misdemeanor to carry a concealed weapon. Enumerated weapons include pistols or other weapons designed to propel a missile by action of an explosion of any combustible material, knives, flailing instruments and discs with pointed blades. A second violation is punishable as a Class 6 felony and any third or subsequent conviction is a Class 5 felony.

Convictions under § 18.2-308 are not covered by Virginia's sentencing guidelines as the primary (most serious) offense in a sentencing event, but may augment the guidelines recommendation if a covered offense is the most serious at conviction.

#### **Data Analysis:**

Based on FY2001 and FY2002 Local Inmate Data System (LIDS) data, 879 offenders held pre- or post-trial in jail were convicted of first-offense carrying a concealed weapon under § 18.2-308 (see *Background Sentencing Information* below). Of these, the majority (87%) received a local-responsible (jail) sentence, with a median sentence of one month. Approximately 2%, convicted of additional charges, received state-responsible (prison) sentences. However, LIDS data does not contain information about the type of weapon involved in the offense.

According to FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, there were 30 felony convictions under § 18.2-308 for second offense carrying a concealed weapon as the primary (most serious) offense in a sentencing event. Of these, 27% received probation without an active term of incarceration, 60% received local-responsible (jail) sentences, and 13% received state-responsible (prison) sentences, with a median sentence of 1.5 years. In addition, one offender, convicted of third offense carrying a concealed weapon as the primary offense, received a jail sentence of two days. Two of these 31 cases (6.5%) involved a knife.

In addition, 156 offenders were convicted of carrying a concealed weapon as an additional offense in a sentencing event. In half (49%) of these cases the primary offense was a narcotics violation, while 23%

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had another weapons violation as the primary offense. In these 156 cases, over half (52%) received state-responsible (prison) sentences (median sentence of 3 years) and another 27% served local-responsible (jail) terms. Seven of the cases (4.5%) involved a knife.

### Background Sentencing Information

Misdemeanor Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Local-Responsible Sentence
Carry concealed weapon, first conviction (§ 18.2-308)	879	11%	87%	2%	1 month

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
Carry concealed weapon, second conviction (§ 18.2-308)	30	27%	60%	13%	1.5 years
Carry concealed weapon, third conviction (§ 18.2-308)	1	0%	100%	0%	NA

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

### Impact of Proposed Legislation:

The proposed legislation may have an impact on the state-responsible (prison) bed space needs of the Commonwealth, but the impact is likely to be small. Available data suggest that only a small portion (4.5% to 6.5%) of the convictions for carrying a concealed weapon involve a knife of some sort. Moreover, a first-time conviction for carrying a concealed weapon is a Class 1 misdemeanor punishable by up to 12 months in jail. Second and third convictions for concealed weapons, while punished as felonies, represent only a small fraction of the total convictions for concealed weapons. For these reasons, the impact of adding machetes to this statute is expected to be negligible.

Convictions under § 18.2-308 are not covered by Virginia's sentencing guidelines as the primary (most serious) offense in a sentencing event, but may augment the guidelines recommendation if a covered offense is the most serious at conviction. No adjustment to the guidelines would be necessary under the proposal.

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

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