



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 136 (Patron – Peace)

LD#: 08-7723676

Date: 11/28/2007

Topic: Possession of weapons on school property

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined, likely to be negligible
- **Local Adult Correctional Facilities:**
Cannot be determined, likely to be negligible
- **Adult Community Corrections Programs:**
Cannot be determined, likely to be negligible

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

Summary of Proposed Legislation:

The proposal amends § 18.2-308.1 to clarify that the weapons prohibitions on school property includes all schools offering instruction from kindergarten through grade 12, not just those that are subdivided into elementary, middle or high schools. Currently, it is a Class 1 misdemeanor to possess any stun weapon, a knife (other than a pocketknife with a folding blade less than three inches) or a weapon similar to those designated in § 18.2-308 on school property, and a Class 6 felony to possess any firearm on school property. If a person possesses a firearm on school property and intends to use it, attempts to use it or displays it in a threatening manner, the penalty includes a mandatory minimum term of five years.

The General Assembly has refined § 18.2-308.1 several times recent years. In the 2007 session, the definition of “stun weapon” was generalized to eliminate the need for a separate definition of “taser.” In the 2005 session, persons with a valid concealed handgun permit parked in a motor vehicle were exempted from the weapons prohibition. In the 2004 session, the statute was part of a larger effort to standardize language regarding mandatory minimum sentences. In the 2003 session, changes made it explicit that a firearm expelled a projectile by action of a combustible material and that a “closed container” includes a locked vehicle trunk. In the 2001 session, pocketknives with a folding blade less than three inches were exempted from the prohibited weapons. In the 1999 session, persons possessing weapons as a part of the school’s curriculum or activities were exempted from the prohibition.

Analysis:

According to fiscal year (FY) 2006 and FY2007 Pre/Post-Sentence Investigation (PSI) data, nine offenders were convicted of a Class 6 felony under § 18.2-308.1(B) for possessing a firearm on school property. Eight offenders were convicted of simple possession of a firearm on school property; two of the eight were sentenced to prison (1.25 years and 5 years¹). The remaining offender was convicted of

¹ This person was also convicted of being a violent felon in possession of a firearm; the mandatory minimum associated with this crime was the basis for the five year sentence.

possessing a firearm on school property with an intent or attempt to use it or resulting in a display of the firearm in a threatening manner; this person was sentenced to seven years – five years were mandatory based on § 18.2-308.1(B) and two years were mandatory based on possession of a firearm by convicted felon with a non-violent prior felony record.

According to the General District Court Automated Information System (CAIS), 64 persons were convicted during calendar year (CY) 2005 and CY2006 of a Class 1 misdemeanor possession of a prohibited weapon on school property under § 18.2-308.1(A). Most of these offenders, were not given an active term of incarceration. For those sentenced to incarceration, the median jail sentence was approximately 17 days.

These data do not include cases adjudicated in Virginia's Juvenile and Domestic Relations (JDR) Courts.

Impact of Proposed Legislation:

State adult correctional facilities. Although the impact of this proposal on state-responsible (prison) bed space needs cannot be determined, it is expected to be negligible because nearly all school property is covered by the existing language of § 18.2-308.1.

Local adult correctional facilities. Although the impact of this proposal on local-responsible (jail) bed space needs cannot be determined, it is expected to be negligible because nearly all school property is covered by the existing language of § 18.2-308.1.

Adult community corrections resources. Although the impact of this proposal on state and local community corrections resources cannot be determined, it is expected to be negligible because nearly all school property is covered by the existing language of § 18.2-308.1.

Virginia's sentencing guidelines. The sentencing guidelines cover violations of simple possession of a firearm on school property under § 18.2-308.1(B) handled in Virginia's circuit courts. Other violations of § 18.2-308.1 may augment the sentence recommendation when the primary (or most serious) offense at conviction is a covered offense. No adjustment to the guidelines is necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase the need for juvenile correctional center (JCC) beds.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

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