



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 580

Floor Amendment in the Nature of a Substitute (Patron Prior to Substitute – Marsden)

LD #: 10105242

Date: 2/11/2010

Topic: Air- or gas-operated weapons on school property

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **Local Adult Correctional Facilities:**
Cannot be determined (likely to be small)
- **Adult Community Corrections Programs:**
Cannot be determined (local only)

- **Juvenile Correctional Centers:**
Cannot be determined
- **Juvenile Detention Facilities:**
Cannot be determined

Summary of Proposed Legislation:

The proposal adds subsection A1 to § 18.2-308.1 to make it a Class 1 misdemeanor for a person, under the age of 18, to possess an air- or gas-operated weapons (such as airsoft guns) on school property, on property being used exclusively for a school-sponsored function or extracurricular activity, or a school bus. The prohibition would not include weapons that has a distinctive marking that complies with 15 U.S.C 5001 and any rules established under that statute. Under current *Code* (§ 18.2-311.2), a third or subsequent conviction for a firearm offense increases from a Class 1 misdemeanor to a Class 6 felony. Based on the second enactment clause, the provisions of the proposal would expire on July 1, 2015.

The General Assembly has refined § 18.2-308.1 several times in recent years. In the 2007 session, the definition of “stun weapon” was modified. In 2005, persons with a valid concealed handgun permit parked in a motor vehicle were exempted from the weapons prohibition. In 2003, a firearm was explicitly defined as expelling a projectile by action of a combustible material and a “closed container” was defined to explicitly include 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 the General District Court Automated Information System (CAIS), 44 persons were convicted during FY2008 and FY2009 of a Class 1 misdemeanor for 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 to serve. For those given a jail term, the median jail sentence was roughly 10 days.

According to the Circuit Court Automated Information System (CAIS), two persons were convicted during the six-year period from FY2004 through FY2009 of a Class 6 under § 18.2-311.2 for a third weapon offense. One offender was also convicted of more serious felony charges. For the other

offender, the weapon charge was the most serious offense in the case; that offender received a sentence of 12 months in jail.

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

Impact of Proposed Legislation:

State adult correctional facilities. The proposal is unlikely to increase the need for state-responsible (prison) beds during the six-year window specified by § 30-19.1:4 for legislative impact statements. The proposal defines a Class 1 misdemeanor, the provisions of which apply to persons under 18 years of age. Although a third or subsequent weapon offense becomes a Class 6 felony, it is unlikely that the proposal will lead to many, if any, additional felony convictions before the provisions expire in 2015. Finally, data reveal only one offender convicted of a felony for a third or subsequent weapons offense (as the most serious charge) during the most recent six-year period and that offender was given a 12-month jail term.

Local adult correctional facilities. The impact of the proposal on local-responsible (jail) bed space needs cannot be quantified, but any impact is likely to be very small.

Adult community corrections programs. The proposal may have an impact on local adult community corrections resources, but the extent of the impact cannot be determined. An impact on state community corrections programs is not expected.

Virginia's sentencing guidelines. Misdemeanor convictions under § 18.2-308.1 and felony convictions under § 18.2-311.2 are not covered by the sentencing guidelines as the primary, or most serious, offense. Such a conviction, however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines is necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice, the impact of the proposal on juvenile correctional center bed space needs cannot be determined.

Juvenile detention facilities. According to the Department of Juvenile Justice, the impact of the proposal on the bed space needs of juvenile detention facilities cannot be determined.

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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.