



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1746

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

LD#: 13104471

Date: 1/24/2013

Topic: Definition of violent felonies

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000*
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends § 17.1-805(C) to expand the definition of a violent felony offense for the purposes of Virginia's sentencing guidelines. The proposal amends subsection C to add numerous offenses, including strangulation resulting in bodily injury under § 18.2-51.6, felony assault and battery as a hate crime under § 18.2-57(B), and certain gang recruiting offenses under § 18.2-46.3.

In 1994, the General Assembly adopted legislation to abolish parole and implement truth-in-sentencing for felony offenses committed on or after January 1, 1995. The legislation adopted in 1994 included provisions for a system of discretionary sentencing guidelines to be used by judges in Virginia's circuit courts. While compliance with the guidelines is discretionary, the guidelines must be prepared and submitted to the court and reviewed by the judge prior to sentencing. The framework of the guidelines system is laid out in § 17.1-800 through § 17.1-806. Subsection C of § 17.1-805 specifies the crimes that are defined as violent felony offenses under the sentencing guidelines. Offenders with prior convictions for violent felony offenses receive "enhancements" on the guidelines that increase the recommended sentences for those offenders.

Analysis:

Since enacted by the General Assembly in 1994, the list of violent felony offenses in § 17.1-805(C) has been expanded twice (1999 and 2004 General Assemblies) to include offenses not contained in the original legislation. According to Sentencing Guidelines data for fiscal year (FY) 2011 and FY2012, of the 48,655 offenders scored on the sentencing guidelines during this time period, 16.6% received a midpoint enhancement due to a prior violent felony offense currently listed in § 17.1-805(C).

Several statutes in the *Code* (§§ 18.2-248, 18.2-254.1, 18.2-308.2, 18.2-460, 19.2-120.1, and 19.2-303.5) contain references to § 17.1-805 in order to define a violent offender, to specify criminal penalties, to limit eligibility for a program, or to determine eligibility for release on bail. Statutes related to Virginia's victim assistance fund (§ 19.2-368.2) and the restoration of civil rights (§ 53.1-231.2) also include references to § 17.1-805.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. By amending § 17.1-805(C) to add offenses to the definition of a violent felony, offenders who have prior convictions for any of those offenses will be recommended by the sentencing guidelines for longer terms of state-responsible incarceration. Overall, Virginia's circuit court judges comply with the sentencing guidelines recommendations in nearly 80% of the felony cases before them. Thus, the proposal is likely to result in longer prison terms for some offenders. However, the number of offenders who, in the future, would receive longer sentence recommendations because of the changes made by the proposal is unknown. Therefore, the magnitude of the impact on state-responsible bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the impact on local-responsible (jail) bed space needs cannot be determined.

Adult community corrections resources. The potential impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. No adjustment to the guidelines is necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice, the legislative proposal may have an impact on juvenile correctional center bed space needs. However, the actual impact on juvenile correctional center bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that, while the legislative proposal may have an impact on juvenile detention bed space needs, the actual impact on juvenile detention facilities cannot be determined.

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; therefore, Chapter 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.