



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 832

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

LD#: 13105025

Date: 2/8/2013

Topic: Mandatory minimum sentences to be served consecutively

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$743,967 (26 beds)
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
None (\$0)

- **Juvenile Correctional Centers:**
Cannot be determined, likely to be small
- **Juvenile Detention Facilities:**
Cannot be determined, likely to be small

Summary of Proposed Legislation:

The proposal amends § 18.2-12.1, in addition to numerous other sections of the *Code of Virginia*, relating to mandatory minimum sentences. The proposal amends § 18.2-12.1 to require that any term of confinement imposed as the result of a mandatory minimum sentence be served consecutively with any other sentence received.

Currently, certain sections of the *Code* specify that particular mandatory minimums must be served consecutively with any other sentence (see, e.g., §§ 18.2-248(C), 18.2-248.01, or 18.2-308.1(C)) or with sentences for certain offenses (§§ 18.2-53.1 and 18.2-308.4). However, some *Code* sections that establish mandatory minimum penalties, such as §§ 16.1-253.2 and 18.2-154, remain silent regarding whether the mandatory minimum must be served consecutively. The proposal requires that all mandatory terms run consecutively with any other sentence received.

Analysis:

According to the Circuit Court Automated Information System (CAIS) and Sentencing Guidelines databases for fiscal year (FY) 2011 and FY2012, 78 felony offenders were convicted of multiple offenses carrying mandatory minimum terms and received a sentence below the total amount of time that the offender would have received if the mandatory minimums had been run consecutively. The primary, or most serious, offense in the majority (90%) of these cases was a felony person or property crime. In the remaining 10%, the primary offense was a drug crime. The median increase in sentence length if the mandatory minimum terms were run consecutively for these offenders was one year.

Data are insufficient to identify other cases that would be affected by the proposal, such as:

- Cases in which a mandatory minimum term was run concurrently with another sentence but the total sentence was higher than the mandatory minimum; and
- Cases involving mandatory minimum terms for misdemeanors that were run concurrently to another sentence.

Impact of Proposed Legislation:

State adult correctional facilities. By requiring that all mandatory minimum terms run consecutively with any other sentence received, the proposal is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. Existing databases do not contain sufficient information to identify all cases in which mandatory minimum terms were not run consecutively (see above). Offenders who were convicted of a felony and received a sentence that was lower than the sum of the mandatory minimum terms could be identified and included in the analysis.

Based on the portion of affected felony offenders who could be identified, the increase in prison bed space needs of is expected to be at least 26 beds by FY2019. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$743,967.

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

FY14	FY15	FY16	FY17	FY18	FY19
3	10	14	17	19	26

Local adult correctional facilities. Based on the portion of affected felony offenders who could be identified, the proposal is expected to decrease the future need for local-responsible (jail) beds. However, the number of affected misdemeanor cases involving mandatory minimums could not be identified. This aspect of the proposal is expected to increase jail bed-space needs. The net impact of the proposal on jail beds cannot be determined.

Adult community corrections resources. The proposal is not expected to increase the need for community corrections resources and will likely delay the need for services for some offenders affected by the proposal, as they will stay in jail or prison longer prior to being released to the community.

Virginia's sentencing guidelines. Felony convictions under several sections of the *Code* containing mandatory minimum terms, including § 18.2-53.1 and § 18.2-248(C), are covered by the sentencing guidelines as the primary, or most serious, offense. Convictions for offenses that are not covered by the guidelines may augment the sentence recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. The Department of Juvenile Justice (DJJ) reports that the proposal's impact on bed space needs for juvenile correctional centers cannot be determined. Any impact, however, is likely to be small.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on bed space needs for juvenile detention centers cannot be determined. Any impact, however, is likely to be small.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$743,967 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.

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety's Committee on Inmate Forecasting in 2012.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety's Committee on Inmate Forecasting and approved in 2012.

3. Cost per prison bed was assumed to be \$29,081 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.***
4. Cost per jail bed was based on The Compensation Board's FY2011 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.21 per day or \$10,304 per year. The local cost was calculated by using the daily expenditure cost of \$74.07 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$40.96 per day or \$14,961 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.***

Assumptions relating to affected cases

1. Analysis includes felony offenders who were convicted of multiple offenses carrying mandatory minimum terms (at least one of which was a felony) and received a sentence below the total amount of time that the offender would have received if the mandatory minimums had been run consecutively.
2. Cases were selected for inclusion in the analysis based on the Virginia Crime Codes (VCCs) recorded on the cover sheet of the sentencing guidelines forms submitted to the Sentencing Commission or entered by the circuit court clerks in the CAIS data system.

Assumptions relating to sentencing and time served

1. The impact of the proposed legislation, which would be effective on July 1, 2013, is phased in to account for case processing time.
2. Offenders affected by the proposal and identified for inclusion in the analysis were assumed, in the future, to serve the mandatory minimum terms as if they were run consecutively.
3. 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 the Department of Corrections' facilities were earning sentence credits as of December 31, 2011. For felons serving a prison term for violent offenses, this rate was 8.8%. For felons serving a prison term for property offenses, this rate was 9.9%. For felons serving a prison term for drug offenses, this rate was 10.1%.

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