



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 453

(Patron – Wyatt)

LD#: 20103745

Date: 12/23/2019

Topic: Use of drones near correctional facilities

Fiscal Impact Summary:

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

- **Juvenile Direct Care:**
Cannot be determined **
- **Juvenile Detention Facilities:**
Cannot be determined **

** Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 854 of the 2019 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal adds § 18.2-121.4 of the *Code of Virginia* to prohibit any person from using an unmanned aircraft system within either a horizontal distance of 500 feet or a vertical distance of 250 feet from any local or state correctional facility. A violation is a Class 1 misdemeanor. This is the same penalty as currently established (§ 18.2-121.3) for using a drone to enter the property of another to coerce, intimidate, or harass. As proposed, the penalty would increase to a Class 6 felony for the use of a drone to deliver, attempt to deliver, or conspire with another to deliver any controlled substance or marijuana to a prisoner confined in a local or state correctional facility. It would be a Class 5 felony if a drone is used to deliver a firearm, ammunition, or explosive of any nature to a prisoner confined in a local or state correctional facility.

Current law specifies that it is a Class 5 felony for the delivery of narcotics or marijuana to an inmate and a Class 3 felony for the delivery of a weapon (§ 18.2-474.1). The proposed legislation is silent as to whether the penalty for use of a drone would be in addition to a conviction under the existing statutes.

Analysis:

According to the fiscal year (FY) 2018 and FY2019 Circuit Court Case Management System (CMS) database, 185 offenders were convicted of the delivery of narcotics or marijuana to an inmate, under § 18.2-474.1; this offense was the primary, or most serious, offense in 125 of the cases. Nearly half of these offenders (49.6%) received a local-responsible (jail) term with a median sentence of six months. Another 23.2% received state-responsible (prison) terms (median sentence of one year). The remaining 27.2% were

not given an active term of incarceration to serve after sentencing. There were no convictions for delivery of weapons to inmates during this period.

For the same period, General District Court Case Management System (CMS) data do not include any convictions for use of drones under § 18.2-121.3. However, this statute was just added to the *Code* in 2018 and amended in 2019.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal adds § 18.2-121.4 to establish new Class 5 and Class 6 felonies for use of a drone to provide drugs or weapons to inmates. The proposed felonies may be in addition to existing statutes related to providing drugs and weapons to inmates. The proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, available data do not provide sufficient detail to estimate the number of new felony convictions that may result from enactment of the proposal. Therefore, the magnitude of the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal may also increase local-responsible (jail) bed space needs. However, the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for state community corrections resources. Since the number of cases that may be affected by the proposal cannot be determined, the potential impact on community corrections cannot be quantified.

Virginia's sentencing guidelines. Convictions under § 18.2-121.4 would not be covered by the sentencing guidelines when the offense is the primary, or most serious, offense at sentencing. 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 direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact 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 cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 854 of the 2019 Acts of Assembly 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.