



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 85 (Patron – DeSteph)

LD#: 20101248

Date: 11/22/2019

Topic: Felony offenses related to stolen firearms

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$2,815,277 (78 beds)
- **Local Adult Correctional Facilities:**
-\$112,511 (-9 beds)
- **Adult Community Corrections Programs:**
None (\$0)

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

* Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposal modifies §§ 18.2-53.1 and 18.2-108.1 to raise existing felony penalties and establish mandatory minimum terms for certain offenses related to stolen firearms.

Currently, under § 18.2-53.1, it is unlawful to use, attempt to use, or display a firearm while committing or attempting to commit specified felonies. Violation is punishable as a separate and distinct felony and subject to a three-year mandatory sentence if it is the individual's first conviction under § 18.2-53.1 and a five-year mandatory sentence if it is the individual's second or subsequent conviction under § 18.2-53.1. Moreover, any person who receives or buys a firearm from another person or aids in concealing it while knowing such firearm was stolen is guilty of a Class 6 felony pursuant to § 18.2-108.1.

Under the proposal, the mandatory minimum for a first offense under § 18.2-53.1 would increase from three to five years, while the mandatory minimum for a second or subsequent offense would increase from five to ten years if the person violating that section knew or should have known that a firearm used in the offense was stolen. In addition, the proposal for § 18.2-108.1 makes several additions and modifications. First, under the proposed § 18.2-108.1 (A), any person who commits simple larceny of a firearm with intent to sell or distribute it would be guilty of a Class 3 felony and subject to a mandatory minimum sentence of five years. Second, under the proposed § 18.2-108.1 (B), any person who sells, distributes, or possesses with intent to sell/distribute a firearm while knowing that it was stolen would be guilty of a Class 5 felony that includes a mandatory minimum term of two years. Lastly, a person convicted under the current § 18.2-108.1 for receiving a stolen firearm would be given a mandatory minimum term of one year under the proposal.

Analysis:

Existing data sources do not contain sufficient detail to identify precisely the number of offenders who may be affected by the proposed revisions of §§ 18.2-53.1 and 18.2-108.1. However, it is possible to estimate future impacts based on the number of offenders convicted of certain combinations of offenses under existing *Code*.

Regarding the proposal for § 18.2-53.1, fiscal year (FY) 2018 and FY2019 Sentencing Guidelines data shows that there was only one offender with a felony conviction under §18.2-53.1 who was also convicted under §18.2-108.1 (for receiving a stolen firearm) in the same sentencing event. With respect to the proposed §18.2-108.1(B), no offenders were convicted under § 18.2-108.1(for receiving a stolen firearm) and §18.2-108.01(B) (intent to sell or distribute stolen property) in the same sentencing event. On the other hand, in relation to the proposed §18.2-108(A), 34 offenders were convicted of a completed act of stealing a firearm (§18.2-95(iii)) together with the intent to sell/distribute stolen property (§ 18.2-108.01). These individuals may be subject to the proposed five-year mandatory minimum sentence. Regarding the proposed §18.2-108.01(C), 103 sentencing events during the two-year period included a felony conviction under §18.2-108.01 (receiving a stolen firearm) either as the primary (most serious) offense or as an additional offense, making these individuals subject to the proposed one-year mandatory minimum term.

Other offenders may also be subject to the proposed mandatory minimums if the legislation were enacted; however, they cannot be identified using the available data.

Impact of Proposed Legislation:

State adult correctional facilities. By increasing existing felony penalties and establishing mandatory minimum terms for the commission of certain firearm-related felonies, the proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. Enhancing penalties for the felony convictions as proposed is expected to increase bed space needs by at least 78 beds by FY2026. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$2,815,277. This is a minimum estimate, as the data are insufficiently detailed to identify all potentially affected cases.

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

FY21	FY22	FY23	FY24	FY25	FY26
15	36	47	60	73	78

Local adult correctional facilities. The proposal is expected to decrease the need for local-responsible (jail) beds, since some offenders currently sentenced to jail would be required to serve a state-responsible (prison) term under the proposal. The impact on local-responsible (jail) beds is estimated to be nine beds by FY2026 (state savings: \$112,511; local savings: \$169,391).

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

Virginia's sentencing guidelines. Felony convictions under §§ 18.2-53.1 and 18.2-108.1 are covered by the sentencing guidelines. Whenever a mandatory minimum term applies, guidelines preparers are instructed to replace any part of the guidelines range that falls below the mandatory minimum with the mandatory minimum term that is required by law. As a result, no adjustment to the guidelines would be 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 is at least \$2,815,277 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 2019.
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 2019.
3. Cost per prison bed was assumed to be \$36,315 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 FY2018 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$34.07 per day or \$12,444 per year. The local cost was calculated by using the daily expenditure cost of \$88.14 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 \$51.29 per day or \$18,734 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 offenders

1. Analysis is based on the number of offenders convicted of certain combinations of offenses under existing Code. Fiscal year (FY) 2018 and FY2019 Sentencing Guidelines data shows that there was only one offender with felony convictions under §18.2-53.1 who was also convicted under §18.2-108.1 (for receiving a stolen firearm) in the same sentencing event. Regarding the proposed §18.2-108.1(A), 34 offenders had a conviction for a completed act of stealing a firearm (§18.2-95(iii)) and a conviction for the intent to sell/distribute stolen property (§ 18.2-108.01) in the same sentencing event. It was assumed that these 34 offenders would be eligible for the proposed five-year mandatory minimum sentence. Regarding the proposed §18.2-108.01(B), no offenders were convicted under §18.2-108.1 (receiving a stolen firearm) and §18.2-108.01(B) (intent to sell or distribute stolen property) in the same sentencing event. Reflecting the proposed §18.2-108.01(C), 103 sentencing events during the two-year period included a felony conviction under §18.2-108.01 (receiving a stolen firearm) either as the primary (most serious) offense or as an additional offense. It is assumed that these 103 offenders would be subject to the proposed one-year mandatory minimum sentence.

Assumptions relating to sentencing and time served

1. The impact of the proposed legislation, which would be effective on July 1, 2020, is phased in to account for case processing time.
2. 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 Department of Corrections' facilities were earning sentence credits as of December 31, 2018. For larceny crimes, this rate was 8.7%.
3. If an offender was convicted of multiple counts, the mandatory minimum terms were assumed to run consecutively.¹ With regard to the proposed § 18.2-108.1(A), this analysis only considers lesser counts of any possible combinations of the affected convictions (18.2-95(iii)) with either 18.2-108.01(A) or 18.2-108.01(B)) in order to reasonably calculate the total mandatory minimums that would be imposed on the affected offenders.
4. Identified offenders meeting the assumptions for the proposed mandatory minimums who received sentences less than the proposed mandatory minimums were assumed to serve the mandatory minimum term specified in the proposal. Offenders currently receiving sentences exceeding the proposed mandatory minimum were assumed to be unaffected by the proposed legislation.

¹ Analysis revealed that, in 96.9% of cases, judges set multiple mandatory minimum sentences to run consecutively (2010 Annual Report of the Virginia Criminal Sentencing Commission).

Limitations

1. Existing data sources do not contain sufficient detail to identify precisely the number of offenders who may be affected by the proposed revisions of §§ 18.2-53.1 and 18.2-108.1. Thus, this projection is a minimum estimate.

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