



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 89 ***(Patron – DeSteph)***

LD#: 20101277

Date: 11/21/2019

Topic: Violation of protective orders while armed with firearm or deadly weapon

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$135,356 (4 beds)
- **Local Adult Correctional Facilities:**
-\$ 3,728 (less than 1 bed)
- **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 §§ 16.1-253.2 and 18.2-60.4 to establish a mandatory minimum term for violating the provisions of a protective order while armed with a firearm.

Currently, under §§ 16.1-253.2 (B) and 18.2-60.4 (B), any person convicted of violating a protective order while knowingly armed with a firearm or other deadly weapon is guilty of a Class 6 felony. Under the proposal, any person convicted of a Class 6 felony under §16.1-253.2 (B) or §18.2-60.4 (B) must serve a mandatory minimum term of three years. The proposed mandatory minimum term must run consecutively with any other sentence.

Analysis:

According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2018 and FY2019, nine offenders were convicted of a completed felony in violation of §16.1-253.2(B) or §18.2-60.4(B). Seven offenders were sentenced to a state-responsible (prison) term with a median sentence of 15 years; one of these offenders, also convicted of rape, kidnapping and other felonies, received a life sentence. The remaining two offenders received a local-responsible (jail) term; one received a term of 7.3 months, and the other received a term of 10 days.

Impact of Proposed Legislation:

State adult correctional facilities. By establishing mandatory minimum sentence for violations of § 16.1-253.2(B) or § 18.2-60.4(B), the proposal is expected to have an impact on the future state-responsible (prison) bed space needs of the Commonwealth. The impact on state-responsible bed space needs is estimated to be four beds by FY2026. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$135,356.

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

FY21	FY22	FY23	FY24	FY25	FY26
0	2	3	4	4	4

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 one partial bed by FY2026 (state savings: \$3,728; local savings: \$5,613).

Adult community corrections resources. 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 stay in prison longer prior to being released to the community.

Virginia's sentencing guidelines. Currently, felony violations of protective orders under § 16.1-253.2(B) and § 18.2-60.4(B) are not covered by the guidelines when this crime is the primary, or most serious, offense. However, convictions under this statute may augment the guidelines 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 direct care. According to the Department of Juvenile Justice (DJJ), 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 \$135,536 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 includes all cases involving a completed offense under §16.1-253.2(B) and § 18.2-60.4(B) as the primary (most serious) offense in the case or as an additional offense to a more serious felony.

Assumptions relating to sentencing and time served

1. The impact of the proposed legislation, assumed to be effective on July 1, 2020, is phased in to account for case processing time.
2. It was assumed that all eligible offenders under § 16.1-253.2(B) or 18.2-60.4(B) would be sentenced to a three-year mandatory minimum term of imprisonment that would run consecutively with any other sentence upon a conviction as proposed. Identified offenders 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.
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 Department of Corrections' facilities were earning sentence credits as of December 31, 2018. For person crimes, this rate was 8.25%.

Limitations

1. The Circuit Court Case Management System does not include cases from Fairfax or Alexandria.

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