



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 169 (Patron – Albo)

LD#: 08-7833404

Date: 12/19/2008

Topic: Box cutter as a concealed weapon

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Resources:**
Cannot be determined

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

Summary of Proposed Legislation:

The proposal amends § 18.2-308(A) to add box cutters to the list of weapons that cannot be carried in a concealed manner. The specified weapons are deemed to be concealed if they are being carried by a person and are hidden from common observation. Carrying a concealed weapon is a Class 1 misdemeanor for a first offense, a Class 6 felony for a second offense, and a Class 5 felony for a third or subsequent offense. Because the list of weapons in § 18.2-308(A) is referenced by § 18.2-308.2, a convicted felon who possesses a concealed box cutter would be guilty of a Class 6 felony.

The Virginia Court of Appeals recently concluded, in *Harris v. Commonwealth* (September 2007), that a box cutter is not a weapon described in § 18.2-308 as it is currently written.

Analysis:

According to the CY2005 and CY2006 Local Inmate Data System (LIDS), there were 1,104 offenders held pre- or post-trial in jail who were convicted of a misdemeanor for possessing a concealed weapon. For 933 of the 1,104 offenders, this misdemeanor crime was the most serious charge at conviction. The majority (74%) were given a local-responsible (jail) term, for which the median sentence was 1.5 months. The remaining offenders were given no active incarceration (15%) to serve, or were sentenced, along with other misdemeanor crimes, to a state-responsible (prison) term with a median sentence of three years.

The fiscal year (FY) 2006 and FY2007 Pre/Post-Sentence Investigation (PSI) database shows that there were 30 offenders convicted of second offense carrying a concealed weapon. Approximately 37% were given no active incarceration to serve, 40% were given a local-responsible (jail) term (median sentence of 3 months), and 13% were given a state-responsible (prison) term (median sentence of 1.5 years).

During the same time period, there were two convictions for third offense carrying a concealed weapon; one offender was sentenced to approximately two months in a local jail and the other offender was sentenced to 1.5 years in prison.

Impact of Proposed Legislation:

State adult correctional facilities. By explicitly including box cutters in the list weapons specified in § 18.2-308(A), the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The number of additional felony convictions that may result from the proposal cannot be estimated; therefore, the magnitude of the impact cannot be quantified.

Local adult correctional facilities. The proposal may also increase the need for local-responsible (jail) bed space; however, the magnitude of the impact cannot be determined.

Adult community corrections resources. The proposal may increase the need for adult community corrections resources; however, the magnitude of the impact cannot be estimated.

Virginia's sentencing guidelines. Convictions under § 18.2-308 are not covered by the sentencing guidelines as the primary (or most serious) offense in a case; however, convictions for these crimes may augment the guidelines recommendation if a covered offense is the most serious at sentencing. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the impact on juvenile correctional center (JCC) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the 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 and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

boxcutter01_7833