



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1338

(Patron – Barlow)

LD#: 08-1103428

Date: 12/18/2007

Topic: Brandishing a firearm

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$7,618,424 (278 beds)
- **Local Adult Correctional Facilities:**
-\$171,571 (-17 beds)
- **Adult Community Corrections Programs:**
None

- **Juvenile Correctional Centers:**
At least \$134,316 (13 beds)
- **Juvenile Detention Facilities:**
Cannot be determined

Summary of Proposed Legislation:

The proposal amends § 18.2-282 to increase the penalty for pointing, holding or brandishing a firearm, an air or gas operated weapon, or any object similar in appearance in a manner to induce fear in another from a Class 1 misdemeanor to a Class 6 felony. Currently, such a crime is a Class 6 felony only if the violation occurs on school grounds or within 1,000 feet of school property.

In the 2003 session, the General Assembly revised the definition of a firearm for purposes of this section and inserted references to air and gas operated weapons elsewhere in the statute so that these weapons would continue to be covered by this provision.

Analysis:

According to calendar year (CY) 2005 and CY2006 Local Inmate Data System (LIDS) data, a total of 527 offenders held pre- or post-trial in jail were convicted of a Class 1 misdemeanor under § 18.2-282 for brandishing certain weapons. For 413 of the 527 offenders, this offense was the most serious charge at conviction. Most offenders held in jail received an active term of incarceration for the offense. The median jail sentence was approximately two months.

Impact of Proposed Legislation:

State adult correctional facilities. Because it increases the penalty for an existing Class 1 misdemeanor to a Class 6 felony, the proposal is expected to increase the need for state-responsible (prison) beds. The impact is estimated to be 278 beds by FY2014. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$7,618,424.

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

FY09	FY10	FY11	FY12	FY13	FY14
62	133	174	208	243	278

Local adult correctional facilities. Because some offenders currently receiving a jail sentence would instead receive a prison term, the proposal is expected to result in a decrease in the need for local-responsible (jail) beds. The impact is estimated to be a net decrease statewide of 17 beds by FY2014 (state savings: \$171,571; local savings: \$172,100).

Estimated Six-Year Impact in Local-Responsible (Jail) Beds

FY09	FY10	FY11	FY12	FY13	FY14
-11	-14	-15	-15	-16	-17

Adult community corrections resources. Raising a crime from a Class 1 misdemeanor to a Class 6 felony may decrease the demand for local community-based probation services and increase the need for state community corrections resources. The *Code of Virginia*, however, allows judges to utilize local community-based probation programs for Class 5 and Class 6 felons as well as misdemeanants. Data are not available to estimate the impact on local or state community corrections resources that may result from the proposal.

Virginia's sentencing guidelines. As a new felony, violations under § 18.2-282 will not be covered by the sentencing guidelines as the primary (most serious) offense. A conviction under this provision, however, could augment the guidelines recommendation if the most serious offense at sentencing is a covered offense. No adjustment to the sentencing guidelines would be necessary under the proposal.

Juvenile correctional centers. Because the proposal increases the penalty for certain acts from a misdemeanor to a felony, the proposal could result in additional commitments to DJJ. Existing *Code* specifies that a juvenile is eligible for commitment if he is adjudicated for a felony, has a prior felony adjudication or has accumulated a total of four Class 1 misdemeanor adjudications. According to the Department of Juvenile Justice (DJJ), the estimated impact of the proposal on juvenile correctional center bed space needs is 13 beds. This estimate only entails those already committed to DJJ, and does not include additional commitments as a result of a juvenile becoming eligible for commitment based only on a violation of § 18.2-282.

Juvenile detention facilities. The Department of Juvenile Justice reports that the 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 \$7,618,424 for periods of imprisonment in state adult correctional facilities and at least \$134,316 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 2007.
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 July 2007.
3. Cost per prison bed was assumed to be \$27,452 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 FY2006 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.42 per day or \$10,381 per year. The local

cost was calculated by using the daily expenditure cost of \$61.48 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 \$28.51 per day or \$10,413 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*** Note: The Compensation Board does not include data from jails that were not in operation for the entire fiscal year. Middle River Regional Jail was excluded because it opened during FY2006, while Augusta and Tazewell Counties were excluded because their jails were closed during the same time period; Augusta County now participates in the new Middle River Regional Jail and Tazewell County now participates in the Southwest Virginia Regional Jail.

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2008, 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, 2006. For weapons crimes, this rate was 11.88%.
3. To gauge the impact of proposed penalty structure, it was assumed that the distribution of sentences for offenders affected by the proposal will be similar to the distribution of sentences for Class 6 felony convictions for brandishing certain weapons on or within 1,000 feet of school property (§ 18.2-282).

Assumptions underlying the juvenile correctional bed space analysis include:

1. All juveniles adjudicated for a violation of § 18.2-282 who are committed to DJJ with a Class 1 misdemeanor under current law would be committed under the proposed Class 6 felony.
2. Currently, new commitments that would be affected by the proposal have a LOS guidelines assignment of 3-6 months and an average length of stay of 6.55 months. All new commitments under the proposal would have a LOS guidelines assignment of 6-12 months and would serve the average time actually served by those committed under that assignment (7.78 months).
3. Cost per JCC bed was assumed to be \$280 per day (annualized to be \$102,204) as reported by the Department of Juvenile Justice. ***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.***

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