



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 580 (Patron – Marsden)

LD #: 10103404

Date: 1/29/2010

Topic: Air- or gas-operated weapons on school property

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined (local only)

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

Summary of Proposed Legislation:

The proposal expands § 18.2-308.1 to include air- or gas-operated weapons (such as airsoft guns) that are designed to expel a projectile at a speed of more than 250 feet per second by action of compressed air or gas. Specifically, the proposal would make it a Class 1 misdemeanor to possess an air- or gas-operated weapon on school property. Per § 18.2-311.2, upon a third or subsequent conviction for a firearm offense, the penalty increases from a Class 1 misdemeanor to a Class 6 felony.

The General Assembly has refined § 18.2-308.1 several times in recent years. In the 2007 session, the definition of “stun weapon” was modified. In 2005, persons with a valid concealed handgun permit parked in a motor vehicle were exempted from the weapons prohibition. In 2003, a firearm was explicitly defined as expelling a projectile by action of a combustible material and a “closed container” was defined to explicitly include a locked vehicle trunk. In the 2001 session, pocketknives with a folding blade less than three inches were exempted from the prohibited weapons. In the 1999 session, persons possessing weapons as a part of the school’s curriculum or activities were exempted from the prohibition.

Analysis:

According to the General District Court Automated Information System (CAIS), 44 persons were convicted during FY2008 and FY2009 of a Class 1 misdemeanor for possession of a prohibited weapon on school property under § 18.2-308.1(A). Most of these offenders were not given an active term of incarceration to serve. For those given a jail term, the median jail sentence was roughly 10 days.

According to the Circuit Court Automated Information System (CAIS), two persons were convicted during the six-year period from FY2004 through FY2009 of a Class 6 under § 18.2-311.2 for a third weapons offense. One offender was also convicted of more serious felony charges. For the other offender, the felony weapons charge was the most serious offense in the case; that offender received a sentence of 12 months in jail.

These data do not include cases adjudicated in Virginia’s Juvenile and Domestic Relations (JDR) courts.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal expands the applicability of an existing Class 1 misdemeanor weapons offense that, upon a third or subsequent conviction, becomes a Class 6 felony punishable by up to five years in prison. The proposal, however, is unlikely to increase the need for state-responsible (prison) beds during the six-year window specified by § 30-19.1:4 for legislative impact statements. Data reveal only one offender convicted of a felony for a third or subsequent weapons offense (as the most serious charge) during the most recent six-year period and that offender was given a 12-month jail term.

Local adult correctional facilities. By expanding existing misdemeanor provisions defined in § 18.2-308.1, the proposal may increase local-responsible (jail) bed space needs. The number of additional misdemeanor convictions that may result from enactment of the proposal cannot be estimated. Therefore, the magnitude of the impact cannot be quantified.

Adult community corrections programs. The proposal may have an impact on local adult community corrections resources, but the extent of the impact cannot be determined. An impact on state community corrections programs is not expected.

Virginia’s sentencing guidelines. Misdemeanor convictions under § 18.2-308.1 and felony convictions under § 18.2-311.2 are not covered by the sentencing guidelines as the primary, or most serious, offense. 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 correctional centers. According to the Department of Juvenile Justice, the impact of the proposal on juvenile correctional center bed space needs cannot be determined.

Juvenile detention facilities. According to the Department of Juvenile Justice, the impact of the proposal 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 \$0 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.

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