



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2069 (Patron – Athey)

LD#: 11104012

Date: 1/18/2011

Topic: Carrying concealed weapons

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Resources:**
None (\$0)

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

Summary of Proposed Legislation:

The proposal amends § 18.2-308¹ to make it lawful to carry a concealed pistol, revolver or handgun without a permit. The proposal specifies that the person carrying the concealed firearm must inform a law enforcement officer of the weapon or secure it as directed by the officer whenever he is detained by an officer acting in his official capacity. Failure to inform the officer or secure the firearm as instructed would be Class 1 misdemeanor for the first offense, Class 6 felony for a second offense, and a Class 5 felony for a third or subsequent offense.

Carrying a concealed knife, flailing instrument, throwing star or any like weapon would continue to be a Class 1 misdemeanor for the first offense, Class 6 felony for a second offense, and a Class 5 felony for a third or subsequent offense.

The proposal also amends § 18.2-308(J1), which currently applies to persons with concealed weapons permits, to provide that it is a Class 1 misdemeanor for any person carrying a concealed handgun in public place to be under the influence of alcohol or illegal drugs.

Analysis:

According to fiscal year (FY) 2009 and FY2010 data from the General District Court Automated Information System (CAIS), there were 2,591 offenders convicted of a Class 1 misdemeanor for unlawfully carrying a concealed weapon. The majority (71%) of those were not given an active term of incarceration to serve. For the 29% who were given a local-responsible (jail) term, the median sentence was one month.

¹ Although the proposal has been drafted on version of § 18.2-308 that was in effect from July 1, 2006 through June 30, 2007, the intent of the proposal is clear; there have been 26 chapters of the Acts of the General Assembly that has affected § 18.2-308 since then. This impact statement has been based on the intent of the proposal on current language.

According to the Circuit Court Automated Information System (CAIS) for FY2009 and FY2010, 55 offenders were convicted of a Class 6 felony for a second violation of unlawfully carrying a concealed weapon. Approximately half (51%) of the offenders were given a state-responsible (prison) term, for which the median sentence was two years. During the same two-year period, 12 offenders were convicted of a Class 5 felony for a third or subsequent violation. Five of the 12 offenders (42%) were given a prison term with a median sentence of two years.

The number of these cases involving firearms (versus concealed knives or other weapons) is unknown.

There were no offenders in General District or Circuit Court data who were convicted of failing to carry a concealed weapon's permit, being under the influence while carrying a concealed weapon, or possessing a handgun after the concealed weapon's permit was revoked.

Impact of Proposed Legislation:

State adult correctional facilities. By relaxing restrictions on concealed firearms, the proposal will likely result in fewer felony convictions under § 18.2-308. Therefore, the proposal is expected to decrease, not increase, the future state-responsible (prison) bed space needs of the Commonwealth. Due to data limitations, the magnitude of the decrease cannot be determined.

Local adult correctional facilities. Similarly, the proposal is expected to reduce local-responsible (jail) bed space needs; however, the magnitude of the decrease cannot be determined.

Adult community corrections resources. The proposal is expected to decrease the need for adult community corrections resources, since the proposal will likely reduce the number of misdemeanor and felony convictions under § 18.2-308.

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. Such a conviction, however, 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 proposal is not expected to affect juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to affect the bed space needs of juvenile detention facilities.

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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

concealwpn01_4012