

## Department of Planning and Budget

### 2011 Fiscal Impact Statement

**1. Bill Number: SB 903**

House of Origin ☐ Introduced ☐ Substitute ☐ Engrossed  
Second House ☐ In Committee ☐ Substitute ☒ Enrolled

**2. Patron: Deeds**

**3. Committee: Passed both houses**

**4. Title:** Definition of violent felony offense

**5. Summary:**

State law requires the Virginia Criminal Sentencing Commission to develop a system of discretionary sentencing guidelines to be used by judges in the state's circuit courts. While compliance with the guidelines is discretionary, a recommendation based on the guidelines must be prepared and submitted to the court and reviewed by the judge prior to sentencing for a felony offense. For the purpose of the sentencing guidelines, the Code of Virginia defines specific offenses that are deemed "violent felony offenses". Offenders with current or prior convictions for violent felony offenses receive legislatively-mandated "enhancements" on the guidelines that increase the recommended sentences for those offenders.

Currently, the Code of Virginia defines any felony violation of § 18.2-308.1 (possession of firearm or other weapon on school grounds) and § 18.2-308.2 (possession of firearm by convicted felon) as violent felony offenses. The proposed legislation would make the following changes to this provision:

- Limit the applicability to "any felony violation of **subsection C of** § 18.2-308.1". (Emphasis added), and
- Substitute "or" for "and" between § 18.2-308.1 and § 18.2-308.2.

The proposed legislation also makes a technical amendment to § 18.2-308 to clarify the conditions under which a five-year mandatory minimum sentence would apply.

**6. Budget Amendment Necessary:** None.

**7. No. Fiscal Impact.** Final. See Item 8.

## **8. Fiscal Implications:**

The two changes have the potential of affecting the need for prison beds in the Commonwealth. By substituting “or” for “and”, the proposed legislation makes it clear that a conviction under either of the two Code sections is considered a violent felony offense and a conviction of both statutes is not required for an offense to be classified as such and thus receive an enhanced sentence recommendation. However, in its guidelines and all associated manuals, documents, and related materials, the Virginia Criminal Sentencing Commission has assumed that a conviction of both offenses is not required for the offense to be classified as violent. That is, the sentencing guidelines have been implemented in a manner consistent with the intent of the proposed legislation. Therefore, this aspect of legislation will not have any effect on the prison bed space needs of the Department of Corrections (DOC).

The other change, limiting the definition of violent felony offense to one subsection of § 18.2-308.1, rather than to the whole section, could result in a decrease in the bed space needs of DOC. As a result of the proposed language, two offenses would be removed from the list of violent felony crimes. These offenses are (i) possession of a firearm on school property and (ii) a third or subsequent conviction for possessing a weapon other than a firearm on school property. Currently, someone (i) convicted of one of these offenses, or (ii) having been previously convicted of one of these offenses and currently been convicted of another, non-violent felony, would have the sentencing guidelines recommendations enhanced for the current offense. As a result of the proposed language, the sentencing recommendations would be lower, likely resulting in a lesser sentence. There is insufficient data available to project the possible effect on DOC’s prison population.

## **9. Specific Agency or Political Subdivisions Affected:**

Department of Corrections

## **10. Technical Amendment Necessary:** None.

## **11. Other Comments:** None.

**Date:** 3/2/2011

**Document:** G:\LEGIS\Fis-11\Sb903er.Doc Dick Hall-Sizemore