



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 903

Amendment in the Nature of a Substitute (Patron Prior to Substitute – Deeds)

LD#: 11104476

Date: 1/25/2011

Topic: Definition of violent felony

Fiscal Impact Summary:

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

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

Summary of Proposed Legislation:

The proposal amends § 17.1-805(C) to clarify the definition of a violent felony offense for the purposes of Virginia's sentencing guidelines. The proposal also makes a technical amendment to § 18.2-308.1 to clarify the conditions under which a five-year mandatory minimum sentence would apply.

In 1994, the General Assembly adopted legislation to abolish parole and implement truth-in-sentencing for felony offenses committed on or after January 1, 1995. The legislation adopted in 1994 included provisions for a system of discretionary sentencing guidelines to be used by judges in Virginia's circuit courts. While compliance with the guidelines is discretionary, the guidelines must be prepared and submitted to the court and reviewed by the judge prior to sentencing. The framework of the guidelines system is laid out in § 17.1-800 through § 17.1-806. Subsection C of § 17.1-805 identifies the crimes that are defined as violent felony offenses under the sentencing guidelines. 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.

The proposal amends subsection C, as shown below.

- Language specifying that violent felony offenses shall include "any felony violation of §§ 18.2-308.1 *and* 18.2-308.2" is changed to "any felony violation of *subsection C* of § 18.2-308.1 *or* § 18.2-308.2."

The proposed change clarifies that a conviction under either subsection C of § 18.2-308.1 or § 18.2-308.2 is considered a violent felony offense and that a conviction of both statutes is not required for an offense to be classified as such.

The proposed change removes two offenses from the list of violent crimes delineated in subsection C of § 17.1-805. Under the proposal, possession of a firearm on school property and a third or subsequent conviction for possessing a weapon other than a firearm on school property would no longer be defined as violent crimes.

Analysis:

Since enacted by the General Assembly in 1994, the list of violent felony offenses in § 17.1-805(C) has been expanded to include offenses not contained in the original legislation (1999 and 2004 General Assemblies). However, the specific language targeted by the proposal is found in the original legislation and has remained unchanged since its enactment.

In 1994, as the General Assembly considered the legislation to abolish parole and implement truth-in-sentencing, criminal justice agencies were asked to provide a wide array of data and analysis. Based on the many analyses of the original legislation that had been prepared for and reviewed by the legislature, the Virginia Criminal Sentencing Commission (the agency created to administer the new sentencing guidelines) developed the guidelines and all associated manuals, documents, and forms. These new guidelines took effect on January 1, 1995. In the guidelines manual and related materials, violent felony offenses include any felony violation of §§ 18.2-308.1 *or* 18.2-308.2; a conviction of both statutes 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.

Several statutes in the *Code* (§§ 18.2-248, 18.2-254.1, 18.2-308.2, 18.2-460, 19.2-120.1, and 19.2-303.5) contain references to § 17.1-805 in order to define a violent offender, to specify criminal penalties, to limit eligibility for a program, or to determine eligibility for release on bail. Statutes related to Virginia's victim assistance fund (§ 19.2-368.2) and the restoration of civil rights (§ 53.1-231.2) also include reference to § 17.1-805.

Impact of Proposed Legislation:

State adult correctional facilities. Since becoming effective in 1995, the sentencing guidelines have been implemented in a manner largely consistent with the proposal; however, if enacted, the proposal would remove two offenses from the current list of violent crimes. Thus, the proposal is not expected to increase the state-responsible (prison) bed space needs of the Commonwealth.

Local adult correctional facilities. Similarly, the proposal is not expected to increase local-responsible (jail) bed space needs.

Adult community corrections programs. The proposal is not expected to have an impact on resources for adult community corrections programs.

Virginia's sentencing guidelines. No adjustment to the guidelines is necessary under the proposal.

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

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's 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 \$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.