Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1377
(Patron – Stuart)

LD#: 13104807 **Date:** 2/8/2013

Topic: Possession of firearms or explosives with intent to commit violent felony

Fiscal Impact Summary:

- **State Adult Correctional Facilities:** $50,000*
- **Local Adult Correctional Facilities:** Cannot be determined
- **Adult Community Corrections Programs:** Cannot be determined
- **Juvenile Correctional Centers:** Cannot be determined
- **Juvenile Detention Facilities:** Cannot be determined

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of $50,000.

Summary of Proposed Legislation:

The proposal amends §§ 18.2-85 and 18.2-308.1, relating to explosives and firearms, to establish a new Class 3 felony offense. Under the proposal, any person who possesses a firearm, fire bomb, or explosive device within a public, private or religious elementary, middle or high school building or within any building on the campus of any private or state institution of higher education with the intent to commit, upon the premises thereof, a violent felony offense listed in § 19.2-297.1(A) would be guilty of a Class 3 felony. The sentence for this offense would run consecutively with any other sentence. The list of violent felony offenses in § 19.2-297.1(A) includes first and second degree murder and voluntary manslaughter, certain mob-related felonies, felony kidnapping, certain felony sex offenses, malicious wounding, robbery, and arson of an occupied building.

Currently, under § 18.2-85, it is a Class 5 felony to possess materials with the intent to manufacture explosives or to manufacture, transport, distribute, possess, or use a fire bomb or explosives. Under § 18.2-308.1(B), it is a Class 6 felony to possess a firearm on the property of (i) any public, private or religious elementary, middle or high school, (ii) property open to the public that is being used exclusively for a school sponsored function, or (iii) any school bus. Possession of a firearm with the intent to use it or displaying a firearm in a threatening manner on school property is a Class 6 felony and carries a five-year mandatory minimum term of incarceration. Sections 18.2-279 and 18.2-280(B) make it a Class 4 felony to discharge a firearm within or at a school building or on school grounds. Under § 18.2-282(A), brandishing a firearm on school grounds or within 1,000 feet of a school is punishable as a Class 6 felony.

Analysis:

According to the Circuit Court Case Management System (CCMS)[1] for fiscal year (FY) 2011 and FY2012, 17 offenders were convicted of a Class 5 felony under § 18.2-85 for possessing materials with the intent to

[1] Formerly referred to as the Court Automated Information System (CAIS).

manufacture explosives or manufacturing, possessing, etc., explosives. This offense was the primary, or most serious, offense in 10 of the cases. While the majority (70%) of these offenders did not receive an active term of incarceration to serve after sentencing, the remaining three offenders received state-responsible (prison) terms of one year, four years, and five years, respectively. In the other seven cases in which this crime was not the primary offense, the charge accompanied convictions ranging from burglary to possession of a weapon with the intent to terrorize.

The Sentencing Guidelines database for FY2011 and FY2012 indicates that nine offenders were convicted of a Class 6 felony under § 18.2-308.1(B) for possessing a firearm on school property. The firearm offense was the primary, or most serious, offense in five of the cases. Three of these offenders did not receive an active term of incarceration to serve after sentencing. The remaining two offenders were sentenced to local-responsible (jail) terms of one and three months, respectively. In the other four cases in which this crime was not the primary offense, the charge accompanied convictions for distribution, etc., of ½ ounce to five pounds of marijuana or burglary of a dwelling.

According to the CCMS for FY2011 and FY2012, one offender was convicted of possessing a firearm on school property with the intent to use such firearm under § 18.2-308.1(C). This offender was also convicted of several other felonies, including attempted malicious wounding, discharging a firearm on school grounds, and use of a firearm during the commission of a felony. The offender was sentenced to a state-responsible (prison) term of 13 years.

CCMS data also indicate that eight offenders were convicted of a Class 4 felony under §§ 18.2-279 or 18.2-280(B) for discharging a firearm within or at a school building or on school grounds. This offense was the primary, or most serious, offense in three of the cases. While one of these offenders did not receive an active term of incarceration to serve after sentencing, one offender was sentenced to a local-responsible (jail) term of six months. The remaining offender received a state-responsible (prison) term of approximately 3.8 years. In the other five cases in which this crime was not the primary offense, the charge accompanied convictions ranging from burglary to attempted first degree murder. Four additional offenders were convicted of a Class 6 felony under § 18.2-282(A) for brandishing a firearm on or near school property. This offense was the primary (most serious) offense in two of the cases and neither offender received an active term of incarceration to serve after sentencing. In the other two cases in which this crime was not the primary offense, the charge accompanied convictions for maliciously discharging a firearm in or at an occupied building or burglary of a dwelling.

Existing data sources do not provide sufficient detail to determine the number of cases that would be affected by the proposal.

Impact of Proposed Legislation:

State adult correctional facilities. By establishing new Class 3 felony offenses for possessing a firearm, fire bomb, or explosive device within a school with the intent to commit, upon the premises thereof, a violent felony, the proposal could increase future state-responsible (prison) bed space needs of the Commonwealth. However, existing data do not provide sufficient detail to estimate the number of new felony convictions, or potentially longer sentences, that could result from enactment of the proposal. Therefore, the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal could increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. Because the proposal creates new felony offenses, convictions under the proposed §§ 18.2-85(C) or 18.2-308.1(D) would not be 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 proposal may have an impact on juvenile correctional center bed space needs. However, the actual impact on juvenile correctional center bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that, while the proposal may have an impact on juvenile detention bed space needs, the actual impact on juvenile detention facilities cannot be determined.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of $50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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