



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 586 (Patron – Northam)

LD #: 12103288

Date: 1/6/2012

Topic: Felonies committed by prisoners

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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 890 of the 2011 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends § 53.1-203, relating to offenses committed by prisoners in a state, local, or community correctional facility or in the custody of an employee thereof. Under § 53.1-203, certain offenses committed by prisoners, including possessing firearms or ammunition or making, procuring, secreting, or possessing knives, instruments, tools, or other unauthorized items capable of causing death or bodily injury, are punishable as Class 6 felonies. A violation of § 53.1-203(6) for procuring, selling, etc., a Schedule III controlled substance, marijuana, or synthetic cannabinoids is punishable as a Class 5 felony. The proposal modifies § 53.1-203 to state that a prosecution under this section does not prohibit or bar any proceeding under §§ 18.2-308 (relating to concealed weapons) or 18.2-308.2 (felons in possession of certain weapons) or the imposition of any penalties provided for therein. Under § 53.1-204, if a prisoner in a state, local, or community correctional facility or in the custody of an employee thereof commits any felony other than those specified in §§ 18.2-31 (capital murder), 18.2-55 (assault by prisoner), or 53.1-203 (felonies by prisoners), he is subject to the same punishment as if he were not a prisoner.

Currently, under § 18.2-308(A), it is a Class 1 misdemeanor to carry concealed firearms, certain knives, flailing instruments, throwing stars, or any like weapons. A second violation under this section is a Class 6 felony and a third or subsequent violation is a Class 5 felony, punishable by up to ten years imprisonment. Section 18.2-308.2 prohibits the possession or transportation of firearms, firearm ammunition, stun weapons, explosives, and concealed weapons, as defined in § 18.2-308(A), by convicted felons. A violation of this section is a Class 6 felony. Possession of a firearm carries a 5-year mandatory penalty if the offender has been convicted of a violent felony, as defined in § 17.1-805, or a 2-year mandatory minimum sentence if the offender has been convicted of a nonviolent felony within the previous 10 years.

The General Assembly has modified § 53.1-203 twice over the past several years. In 2011, the General Assembly expanded § 53.1-203(6) to include synthetic cannabinoids. The 2006 General Assembly expanded § 53.1-203 to include tampering with, damaging, destroying, or disabling any fire protection system within a correctional facility by a prisoner.

Analysis:

The proposal states that a conviction under § 53.1-203 would not prohibit or bar any prosecution under §§ 18.2-308 or 18.2-308.2. According to FY2010 and FY2011 General District Court CAIS data, 2,329 offenders were convicted of a Class 1 misdemeanor for unlawfully carrying a concealed weapon in violation of § 18.2-308. The majority (71%) of these offenders 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.

Circuit Court CAIS data for FY2010 and FY2011 indicate that 71 offenders were convicted of a Class 6 felony for a second violation of unlawfully carrying a concealed weapon in violation of § 18.2-308. The weapon charge was the primary, or most serious, offense in 45 of the cases. Approximately half (53.3%) of these offenders were given a local-responsible (jail) term, for which the median sentence was three months. Three offenders were sentenced to a state-responsible (prison) term, with a median sentence length of two years. During the same two-year period, 10 offenders were convicted of a Class 5 felony for a third or subsequent violation of § 18.2-308. The weapon charge was the primary offense in seven of the ten cases. While three of the seven offenders (43%) were given a jail term, with a median sentence of six months, three additional offenders received a prison term, for which the median sentence length was two years.

According to FY2010 and FY2011 Sentencing Guidelines data, 1,769 offenders were convicted under § 18.2-308.2(A) for possessing a weapon or firearm as a convicted felon during this two-year period. The weapon charge was the primary offense in 1,005 of the cases. While slightly more than 20% of these offenders did not receive an active term of incarceration to serve after sentencing, 21.1% received a local-responsible (jail) sentence, with a median sentence length of seven months. The remaining 58.4% were sentenced to a state-responsible (prison) term, for which the median sentence length was two years.

The number of these cases that may have been committed by prisoners in a state, local, or community correctional facility or in the custody of an employee thereof is unknown.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal states that a conviction under § 53.1-203 would not prohibit or bar any prosecution under §§ 18.2-308 or 18.2-308.2 or the imposition of any penalties provided for therein. If convicting a defendant of both the prisoner offense and the weapons offense is currently prohibited by the Double Jeopardy Clauses of the federal and state constitutions and § 19.2-294, the proposal may allow for offenders to be convicted of multiple felonies for the same behavior. By allowing for additional felony charges to stem from the same behavior, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal. Therefore, the magnitude of the impact on prison bed space needs cannot be quantified.

Local adult correctional facilities. Similarly, the proposal's impact on the local-responsible (jail) bed space needs of the Commonwealth cannot be determined.

Adult community corrections programs. The net impact of the proposal on community corrections resources cannot be determined.

Virginia’s sentencing guidelines. Felony convictions under § 53.1-203(6) are covered by the sentencing guidelines as the primary (most serious) offense in a case. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice, the proposal is not expected to increase juvenile correctional center bed space needs.

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

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 890 of the 2011 Acts of Assembly 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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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