



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 257 (Patron – Lingamfelter)

LD#: 14102969

Date: 12/23/2013

Topic: Use or display of a firearm in commission of a felony

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$1,162,299 (39 beds)
- **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:

Currently, under § 18.2-53.1, using a firearm in the commission of certain felonies carries a three-year mandatory term of incarceration for the first offense, while a second or subsequent offense carries a five-year mandatory term. These mandatory terms must run consecutively with any punishment received for the primary felony.

Under the proposal, the mandatory minimum for a first offense under § 18.2-53.1 would increase from three to four years, while the mandatory minimum for a second or subsequent offense would increase from five to six years.

#### Analysis:

According to the fiscal year (FY) 2012 and FY2013 Sentencing Guidelines database, 1,009 offenders were convicted of a completed felony for using a firearm during the commission of certain felonies, in violation of § 18.2-53.1. The firearm conviction was most frequently accompanied by a robbery or felony assault conviction.

#### Impact of Proposed Legislation:

**State adult correctional facilities.** By increasing existing mandatory minimum penalties, the proposal is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. The impact on state-responsible (prison) beds is estimated to be 39 beds by FY2020. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$1,162,299.

#### Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY15	FY16	FY17	FY18	FY19	FY20
0	0	0	21	35	39

**Local adult correctional facilities.** The proposal is not expected to impact the need for local-responsible (jail) beds, since offenders who are currently convicted of a completed offense under § 18.2-53.1 must be sentenced to a state-responsible (prison) term.

**Adult community corrections resources.** The proposal is not expected to increase the need for community corrections resources and will delay the need for services for some offenders affected by the proposal, as they will stay in prison longer prior to being released to the community.

**Virginia's sentencing guidelines.** Convictions under § 18.2-53.1 are covered by the sentencing guidelines. No adjustment to the guidelines would be necessary under the proposal.

**Juvenile correctional centers.** According to the Department of Juvenile Justice (DJJ), mandatory minimum terms of incarceration only apply to juveniles if they are transferred to Circuit Court. It is not possible to predict how many juveniles may be transferred to Circuit Court in the future and subsequently subjected to the proposed increase in mandatory minimums when in DJJ custody. As a result, the potential fiscal impact on bed space needs for juvenile correctional centers cannot be quantified.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal's impact on juvenile detention center bed space needs cannot be determined.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$1,162,299 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.**

**Assumptions underlying the analysis include:**

**General Assumptions**

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety's Committee on Inmate Forecasting in 2013.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety's Committee on Inmate Forecasting and approved in 2013.
3. Cost per prison bed was assumed to be \$30,006 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*

**Assumptions relating to affected cases**

1. Analysis includes all cases involving a completed offense under § 18.2-53.1 as the primary (most serious) offense in the case or as an additional offense to a more serious felony.

**Assumptions relating to sentencing**

1. The impact of the proposed legislation, which would be effective on July 1, 2014, is phased in to account for case processing time.
2. Offenders convicted of a completed offense (as the primary or an additional offense) meeting the criteria for the proposed mandatory minimums who were sentenced to less than the proposed mandatory minimums were assumed to serve the mandatory minimum term specified in the proposal. If an offender was convicted of multiple counts, the mandatory minimum terms were assumed to run consecutively.<sup>1</sup>
3. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in the Department of Corrections' facilities were earning sentence credits as of December 31, 2012. For felons serving a prison term for violent offenses, this rate was 8.9%.

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<sup>1</sup> Recent analysis revealed that, in 96.9% of cases, judges set multiple mandatory minimum sentences to run consecutively (2010 Annual Report of the Virginia Criminal Sentencing Commission).