



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 65 (Patrons – Marsh; Delegate: Morrissey)

LD#: 14100105

Date: 12/5/2013

Topic: Celebratory gunfire

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 806 of the 2013 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal adds § 18.2-280.1 to the *Code* to create new felony offenses related to celebratory gunfire. Under the proposal, it would be a Class 6 felony for a person to willfully discharge a firearm (or cause it to be discharged) without a discernible or designated target when the discharge is within or into the limits of any city or town or within two miles of an occupied building. If the conduct results in bodily injury to another, the act would be punishable as a Class 3 felony. If the conduct results in the death of another, the act would be punishable by imprisonment of 5 to 40 years. The proposal includes language stating that nothing in this section shall preclude the Commonwealth from electing to prosecute under any other applicable provisions of law.

Current provisions in the *Code of Virginia* related to discharging a firearm are shown below.

<u>Statute</u>	<u>Description</u>	<u>Penalty</u>
§ 18.2-280(A)	Discharge firearm in a public place	Class 1 misdemeanor (0 to 12 months)
§ 18.2-280(A)	Discharge firearm in a public place, results in injury to another	Class 6 felony (1 to 5 years)
§ 18.2-280(B)	Discharge firearm (or cause it to be discharged) at school buildings or on school grounds, unless engaged in a school activity	Class 4 felony (2 to 10 years)
§ 18.2-280(C)	Discharge firearm (or cause it to be discharged) upon public property within 1,000 feet of a school, unless engaged in lawful hunting	Class 4 felony (2 to 10 years)

<u>Statute</u>	<u>Description</u>	<u>Penalty</u>
§ 18.2-279	Unlawfully discharge firearm or missile in or at an occupied building	Class 6 felony (1 to 5 years)
§ 18.2-279	Unlawfully discharge firearm or missile in or at an occupied building, causes death of another	Involuntary manslaughter - Class 5 felony (1 to 10 years)
§ 18.2-279	Discharge firearm within or at any school building	Class 4 felony (2 to 10 years)
§ 18.2-279	Maliciously discharge firearm or missile in or at an occupied building	Class 4 felony (2 to 10 years)
§ 18.2-279	Maliciously discharge firearm or missile in or at an occupied building, causes death of another	Second-degree murder - Punishable by 5 to 40 years
§ 18.2-279	Maliciously discharge firearm or missile in or at an occupied building - act is willful, deliberate and premeditated and causes death of another	First-degree murder - Class 2 felony (20 years to life)
§ 18.2-286.1	Discharge firearm from motor vehicle	Class 5 felony (1 to 10 years)

Analysis:

Existing data do not contain sufficient detail to determine the number of cases that would be affected by the proposed provision. Sentencing information for offenders convicted under two related statutes is provided below.

According to the General District Court Case Management System (CMS)¹ for FY2012 and FY2013, 162 offenders were convicted of a Class 1 misdemeanor under § 18.2-280(A) for discharging a firearm in a public place. Approximately 47% of these offenders were sentenced to a local-responsible (jail) term, for which the median sentence was one month. The remaining offenders did not receive an active term of incarceration to serve after sentencing.

Circuit Court CMS¹ data for FY2012 and FY2013 indicate that three offenders were convicted of a Class 6 felony under § 18.2-280(A) for discharging a firearm in a public place and causing injury to another (in these cases, the firearm offense was the primary, or most serious, offense at sentencing). Two of these offenders received a local-responsible (jail) term, with a median sentence of 6.5 months, while the remaining offender was not given an active term of incarceration to serve. Two additional offenders were convicted of a Class 4 felony under § 18.2-280(C) for discharging a firearm within 1,000 feet of a school; one of the offenders was given a state-responsible (prison) term of three years, while the other did not receive an active term of incarceration to serve.

FY2012 and FY2013 Sentencing Guidelines data indicate that 69 offenders were convicted of involuntary manslaughter under §18.2-36 (as the primary offense) during the two-year period. The majority (78%) of these offenders received a state-responsible (prison) term, for which the median sentence was 4.3 years. The number of cases involving firearms is not known.

Impact of Proposed Legislation:

State adult correctional facilities. By defining new felonies and establishing penalties up to 40 years for certain offenses, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing data do not provide sufficient detail to estimate the number of new

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

felony convictions 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 may also 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. As new felonies, convictions under the proposed § 18.2-280.1 would not be covered; however, a conviction under this provision could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the impact 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 cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 806 of the 2013 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

firearm09_0105