



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 4007 (Patron – DeSteph)

LD#: 19200129

Date: 07/02/2019

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

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$2,950,216 (84 beds)
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Programs:**
None (\$0)

- **Juvenile Direct Care:**
Cannot be determined*
- **Juvenile Detention Facilities:**
Cannot be determined*

*Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

Currently, under § 18.2-53.1, using a firearm in the commission of certain felonies carries a three-year mandatory minimum 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 or triggering felony.

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

Analysis:

According to the fiscal year (FY) 2017 and FY2018 Sentencing Guidelines database, 802 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, felony assault, or murder conviction.

Impact of Proposed Legislation:

State adult correctional facilities. By increasing existing mandatory minimum penalties for using or displaying a firearm during the commission of certain felonies, the proposal is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. Raising the mandatory minimum term from three to five years for a first violation of § 18.2-53.1 and from five to ten years for a second or

subsequent conviction under this section is expected to increase bed space needs by 84 beds by December 2025. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$2,950,216.

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

Dec. 2020	Dec. 2021	Dec. 2022	Dec. 2023	Dec. 2024	Dec. 2025
0	0	0	19	66	84

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 when this offense is the primary, or most serious, offense in a case. No adjustment to the guidelines would be necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice (DJJ), the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) 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 \$2,950,216 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 2018.
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 2018.
3. Cost per prison bed was assumed to be \$35,053 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.**
4. Cost per jail bed was based on The Compensation Board’s FY2017 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$33.83 per day or \$12,356 per year. The local cost was calculated by using the daily expenditure cost of \$85.98 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$49.53 per day or \$18,091 per year. **Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.**

Assumptions relating to offenders

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 and time served

1. The impact of the proposed legislation, assumed to be effective on January 1, 2020, is phased in to account for case processing time.

2. It was assumed that all eligible offenders under §18.2-53.1 would be sentenced to the proposed mandatory minimum term of imprisonment that would run consecutively with any other sentence upon a conviction as proposed. Identified offenders who received sentences less than the proposed mandatory minimums were assumed to serve the mandatory minimum term specified in the proposal. Offenders currently receiving sentences exceeding the proposed mandatory minimum were assumed to be unaffected by the proposed legislation.
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 Department of Corrections' facilities were earning sentence credits as of December 31, 2017. For person crimes, this rate was 8.15%.

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