



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 72

(Patron – Kory)

LD#: 20100161

Date: 11/14/2019

Topic: Access to firearms by minors

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$35,425 (less than 1 bed)
- **Local Adult Correctional Facilities:**  
\$8,713 (less than 1 bed)
- **Adult Community Corrections Programs:**  
Cannot be determined

- **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 § 18.2-56.2(A), it is a Class 3 misdemeanor for any person to recklessly leave a loaded, unsecured firearm in such a manner as to endanger the life or limb of any child under the age of 14. A Class 3 misdemeanor is punishable by a fine up to \$500.

The proposal would increase the penalty for acts covered under § 18.2-56.2(A) from a Class 3 misdemeanor to a Class 6 felony.

Currently, § 18.2-371.1(B) specifies that any parent, guardian, or other person responsible for the care of a child under the age of 18 whose willful act or omission in the care of such child was so gross, wanton, and culpable as to show a reckless disregard for human life is guilty of a Class 6 felony.

#### Analysis:

According to General District Court and Juvenile & Domestic Relations Court Case Management System (CMS) data, during fiscal year (FY) 2018 and FY2019, ten offenders were convicted of a Class 3 misdemeanor under § 18.2-56.2 (as the primary, or most serious, offense). If the proposal were enacted, offenders convicted of the new Class 6 felony under § 18.2-56.2(A) may be sentenced similarly to those currently convicted of a Class 6 felony under § 18.2-371(B).

According to fiscal year (FY) 2018 and FY2019 Sentencing Guidelines data, 267 offenders were convicted of a Class 6 felony under § 18.2-371.1(B) for gross, wanton or reckless care of a child (as the primary, or most serious, offense). Nearly half of these offenders (46.4%) received a local-responsible (jail) term with a median sentence of four months. Another 12.4% received a state-responsible (prison) term for which the median sentence was approximately 1.4 years. The remaining 41.2% of the offenders did not receive an active term of incarceration to serve after sentencing.

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### Impact of Proposed Legislation:

**State adult correctional facilities.** By elevating the penalty for an existing offense from a misdemeanor to a felony, the proposal is expected to have an impact on the future state-responsible (prison) bed space needs of the Commonwealth. The impact on state-responsible bed space needs is estimated to be less than one bed by FY2026. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$35,425.

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

FY21	FY22	FY23	FY24	FY25	FY26
0	1	1	1	1	1

**Local adult correctional facilities.** The proposal is also expected to increase the future need for local-responsible (jail) beds. The impact on local-responsible (jail) beds is estimated to be one partial bed by FY2026 (state costs: \$8,713; local costs: \$13,118).

**Adult community corrections programs.** Raising a crime from a Class 3 misdemeanor to a Class 6 felony may increase the need for state community corrections resources. The *Code of Virginia*, however, allows judges to utilize local community-based probation programs for Class 5 and Class 6 felons as well as misdemeanants. Data are not available to estimate the impacts on both local and state community corrections resources that may result from the proposal.

**Virginia's sentencing guidelines.** As a new felony offense, convictions under § 18.2-56.2 would not be covered by the sentencing guidelines when the crime is the primary (most serious) offense in a case. A conviction for such an offense, however, 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 direct care.** According to the Department of Juvenile Justice, 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.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$35,425 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 2019.

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 2019.
3. Cost per prison bed was assumed to be \$36,315 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 FY2018 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$34.07 per day or \$12,444 per year. The local cost was calculated by using the daily expenditure cost of \$88.14 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 \$51.29 per day or \$18,734 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. It was assumed that prosecutors would charge all eligible offenders with a Class 6 felony as proposed.

**Assumptions relating to sentencing and time served**

1. The impact of the proposed legislation, which would be effective on July 1, 2020, is phased in to account for case processing time.
2. Offenders affected by the proposal were assumed to receive sentences similar to offenders currently convicted of a Class 6 felony under § 18.2-371.1(B).
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, 2018. For weapon crimes, this rate was 8.9%.

**Limitations**

1. The Circuit Court Case Management System does not include cases from Fairfax or Alexandria.

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