



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 936 (Patron – Brewer)

LD#: 20103234

Date: 12/23/2019

Topic: Robbery

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$7,930,412 (218 beds)
- **Local Adult Correctional Facilities:**
-\$33,725 (3 beds)
- **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:

The proposal amends § 18.2-58 of the *Code* to establish a mandatory minimum sentence of five years for individuals who commit robbery by threat or presenting of firearms or other deadly weapon.

Under current law, any completed act of robbery is punishable by confinement in a state correctional facility for life or any term not less than five years; however, a judge may suspend time from the imposed sentence and order the offender to serve an active term of less than five years for the robbery.

Offenders who use or display a firearm during the commission of a robbery can also be charged and convicted under § 18.2-53.1. Under § 18.2-53.1, using or displaying 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.

Analysis:

According to FY2018 and FY2019 Sentencing Guidelines (SG) data, a conviction for robbery (§ 18.2-58) was the primary (or most serious) offense in 1,068 sentencing events. Of these, 698 involved a completed act of robbery that was committed with a firearm (actual or simulated) or other weapon (identified based on the scores recorded on the Virginia Sentencing Guidelines form submitted for the case).

Offenders in these 698 cases would likely be subject to the proposed five-year mandatory minimum sentence. The vast majority of these offenders (95.6%) received a state-responsible (prison) term for

which the median sentence was 6.8 years. However, 226 of these offenders received a sentence of less than five years, the mandatory minimum specified in the proposal.

Impact of Proposed Legislation:

State adult correctional facilities. By establishing a five-year mandatory minimum penalty for robbery offenses committed with certain weapons, the proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. The impact on state-responsible bed space needs is estimated to be 218 beds by FY2026. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$7,930,412.

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

FY21	FY22	FY23	FY24	FY25	FY26
5	20	47	99	186	218

Local adult correctional facilities. The proposal is expected to decrease the need for local-responsible (jail) beds, since some offenders currently sentenced to jail would be required to serve a state-responsible (prison) term under the proposal. The impact on local-responsible (jail) beds is estimated to be 3 fewer beds by FY2026 (state savings: \$33,725; local savings: \$50,772).

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. Violations of § 18.2-58 are currently covered by the sentencing guidelines. Whenever a mandatory minimum term applies, guidelines preparers are instructed to replace any part of the guidelines range that falls below the mandatory minimum with the mandatory minimum term that is required by law. As a result, 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.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$7,930,412 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.*

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. Analysis includes all offenders who were convicted of a completed robbery (as the primary, or most serious, offense) that was committed with a firearm (real or simulated) or other weapon (as scored of the Virginia Sentencing Guidelines).
2. Analysis excludes juvenile offenders tried in circuit court who were committed to the Department of Juvenile Justice.

Assumptions relating to sentencing and length-of-stay

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. It was assumed that all identified would be sentenced to a five-year mandatory minimum term of imprisonment 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, 2018. For robbery crimes, this rate was 7.66%.

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