



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 86 (Patron – DeSteph)

LD#: 20101249

Date: 11/22/2019

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

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$3,595,290 (99 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) 2018 and FY2019 Sentencing Guidelines database, 826 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 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 99 beds by FY2026. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$3,595,290.

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

FY21	FY22	FY23	FY24	FY25	FY26
0	0	0	23	77	99

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, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

Juvenile detention facilities. According to the Department of Juvenile Justice, 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 \$3,595,290 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.*

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, 2020, 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.¹

¹ 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).

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 14, 2018. For felons serving a prison term for person crimes, this rate was 8.25%.

firearm18_1249