



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 88 (Patron – DeSteph)

LD#: 20101274

Date: 11/22/2019

Topic: Discharging firearms; penalties

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$4,047,615 (111 beds)
- **Local Adult Correctional Facilities:**
-\$27,309 (-2 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 several sections of the *Code of Virginia* to establish mandatory minimum terms for certain offenses related to the unlawful discharge of firearms. Specifically, the proposal would:

- Impose a mandatory minimum term of imprisonment of three years for felony violations of maliciously discharging a firearm within or at an occupied building or dwelling (§ 18.2-279), willfully discharging a firearm within or at any school building (§ 18.2-279), willfully discharging a firearm upon the buildings or grounds of any school, or upon public property within 1,000 feet of a school (§ 18.2-280), and intentionally discharging a firearm while in or on a motor vehicle so as to create risk of death or injury to another person (§ 18.2-286.1);
- Impose a mandatory minimum term of imprisonment of one year for felony violations of unlawfully discharging a firearm within or at an occupied building or dwelling (§ 18.2-279) and willfully discharging a firearm in a public place when such conduct results in bodily injury to another person (§ 18.2-280); and
- Impose a mandatory minimum term of confinement of 90 days in jail for a misdemeanor violation of willfully discharging a firearm in a public place when such conduct does not result in bodily injury to another (§ 18.2-280).

Analysis:

According to fiscal year (FY) 2018 and FY2019 Sentencing Guidelines data and Court Case Management System (CMS) data, 92 of 180 offenders (51.1%) convicted under § 18.2-279 received sentences below the proposed mandatory minimum terms. Similarly, 116 of 176 offenders (65.9%) convicted under § 18.2-280, and 32 of 50 offenders (64%) convicted under § 18.2-286.1, received sentences below the respective

mandatory minimums proposed in the bill. The remaining offenders convicted under these provisions received sentences equal to or higher than the proposed mandatory minimum penalties.

Impact of Proposed Legislation:

State adult correctional facilities. By establishing mandatory minimum terms for the commission of certain firearm-related felonies, the proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. The impact is estimated to be 111 beds by December 2026. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$4,047,615.

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

FY21	FY22	FY23	FY24	FY25	FY26
14	46	79	98	105	111

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 is estimated to be a reduction of two beds by December 2026 (state savings: \$27,309; local savings: \$41,113).

Adult community corrections programs. 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 serve in prison longer prior to being released to the community.

Virginia's sentencing guidelines. Certain felony convictions under §§ 18.2-279 and 18.2-286.1 are 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. Other offenses affected by the proposal are not covered; 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.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$4,047,615 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 sentencing and time served

1. The impact of the proposed legislation, assumed to be effective on July 1, 2020, is phased in to account for case processing time.
2. 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 violent person crimes, this rate was 8.25%.
3. Identified offenders meeting the assumptions for the proposed mandatory minimums 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.
4. If an offender was convicted of multiple counts, the mandatory minimum terms were assumed to run consecutively.¹

Limitations

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

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¹ 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).