

Department of Planning and Budget
2020 Special Session I - Fiscal Impact Statement

1. Bill Number: HB5049H1

House of Origin	<input type="checkbox"/> Introduced	<input checked="" type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: Helmer

3. Committee: House Appropriations

4. Title: Acquisition and use of military property by law-enforcement agencies.

5. Summary: Provides that no agency of the Commonwealth or director or chief executive of any agency or department that employs law enforcement officers shall acquire, purchase, or otherwise accept on any terms (i) weaponized unmanned aerial vehicles; (ii) aircraft that are configured for combat or are combat-coded and have no established commercial flight application; (iii) grenades or similar explosives or grenade launchers; (iv) armored multi-wheeled vehicles that are mine-resistant, ambush-protected, and configured for combat from a surplus program operated by the federal government; or (v) camouflage uniforms. Any agency or director or chief executive of any such agency or department that has previously acquired such property is prohibited from using such items unless they have received a waiver to use such items from the Department of Criminal Justice Services (DCJS). Any waiver request made to DCJS, with the exception of the Department of State Police (VSP), must be limited to special weapons and tactics unit or other equivalent unit use only. VSP may seek a waiver for any of its units. Any such agency or director or chief executive of any agency or department that requests property from a surplus program operated by the federal government shall publish a notice of such request on a publicly accessible website within 14 days after making the request. According to the provisions of the bill, this section should not be construed so as to prohibit the acquisition, purchase, or otherwise acceptance of any personal protective equipment, naloxone or other lifesaving medication, or any personal property from the federal government that is not specifically prohibited. The provisions of this section do not apply to the Virginia National Guard or Virginia Defense Force.

The bill also provides that no locality, sheriff, chief of police, or director or chief executive of any agency or department that employs deputy sheriffs or law enforcement officers, or any public or private institution of higher education that has established a campus police department shall acquire, purchase, or otherwise accept on any terms any such items. It provides that if they have previously acquired such property, they are prohibited from using it unless they have received a waiver to use them from DCJS. Any waiver request made to DCJS shall be limited to special weapons and tactics unit or other equivalent unit use only. The bill requires that any locality, sheriff, chief of police, or director or chief executive of an agency or department that employs deputy sheriffs or law enforcement officers that requests property from a surplus program operated by the federal government shall publish a notice of such request on a publicly accessible website within 14 days after making the request. According to the provisions of the bill, this section should not be construed so as to prohibit

the acquisition, purchase, or otherwise acceptance of any personal protective equipment, naloxone or other lifesaving medication, or any personal property from the federal government that is not specifically prohibited.

The bill requires DCJS to establish and administer a waiver process for law enforcement agencies to use certain military property, and to publish any waivers that have been granted on its website.

Additionally, the bill prohibits the use of kinetic energy munitions, as defined in the bill. The use of kinetic impact munitions as a crowd control measure by a law enforcement officer is prohibited unless: (i) (a) an unlawful assembly has been declared and (b) a warning to disperse has been announced unless a reasonable law enforcement officer believes that the announcement of such warning will risk serious bodily injury or death to such officer or another person; (ii) such officer using or attempting to use a kinetic impact munition has received training and has been qualified in the past year to use kinetic impact munitions as a crowd control measure; (iii) such officer reasonably believes that the use of such kinetic impact munitions is immediately necessary to protect the officer or another person from the threat of serious bodily injury or death; and (iv) such use of kinetic impact munitions is targeted at the specific persons who are the cause of such threat of serious bodily injury or death. In addition to any other penalty authorized by law, a violation of this section is grounds for disciplinary action against the law enforcement officer, including dismissal, demotion, suspension, or transfer of the law enforcement officer.

Law enforcement officers may use crowd control measures that are not prohibited for use by military forces under the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction and may use tear gas if (i) an unlawful assembly has been declared and a warning to disperse has been announced; (ii) a verbal announcement sufficient to be heard by the unlawful assembly of the intent to use tear gas as a crowd control measure has been provided; (iii) reasonable time has been allowed for persons remaining at the unlawful assembly to disperse; (iv) if feasible, a second verbal announcement sufficient to be heard by the unlawful assembly has been provided immediately prior to the use of tear gas; and (v) such officer using or attempting to use tear gas has received training and has been qualified in the past year to use tear gas as a crowd control measure. In addition to any other penalty authorized by law, a violation of this subsection is grounds for disciplinary action against the officer, including dismissal, demotion, suspension, or transfer of the officer.

6. Budget Amendment Necessary: Yes, Item 402.

7. Fiscal Impact Estimates: Preliminary. See below.

7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2020			
2021	\$50,000	0	General
2022			
2023			

2024
2025
2026

- 8. Fiscal Implications:** There is no anticipated fiscal impact on the Division of Capitol Police, the Department of Motor Vehicles (DMV), the Department of State Police (VSP), or the Department of Criminal Justice Services (DCJS) as a result of the provisions of the proposed legislation.

Based upon Circuit Court Case Management System (CMS) data for fiscal years 2014-2019 obtained by the Virginia Criminal Sentencing Commission, eight offenders were convicted under § 18.2-312 (illegal use of tear gas, phosgene and other gases). This was the primary, or most serious offense for three offenders. Of these, two offenders were convicted of a Class 3 felony for maliciously releasing gases; they received sentences of 12 months and six years, respectively. The third offender was convicted of a Class 6 felony for releasing a gas unlawfully, but not maliciously, and was given probation without an active term of incarceration.

The proposed legislation increases the penalty for two existing felonies. Therefore, the bill may increase future state prison bed needs in the Commonwealth. However, available data is not sufficient to estimate the number of cases under the proposed legislation or estimate the overall impact. Accordingly, the magnitude of the impact on prison bed space cannot be determined at this time.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 1289, 2020 Acts of Assembly, requires that a minimum impact of \$50,000 be assigned to the bill.

Any fiscal impact to any other state agency is indeterminate at this time because information is not available. Should additional information become available, the fiscal impact statement will be updated.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Criminal Justice Services, Department of State Police, College and University Police Departments, Department of Motor Vehicles, Virginia Alcoholic Beverage Control Authority, Department of Conservation and Recreation, Division of Capitol Police, Department of Wildlife Resources, Marine Resources Commission, Virginia Lottery, Office of the State Inspector General, Department of Corrections, Department of Juvenile Justice, Local law enforcement agencies, Local and regional jails, state agencies with law-enforcement personnel.

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** None.