Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 5049
Floor Amendment in the Nature of a Substitute
(Patron Prior to Substitute –Helmer)

LD#: 20201300 **Date:** 10/01/2020

Topic: Illegal use of tear gas, etc.

Fiscal Impact Summary:

- **State Adult Correctional Facilities:** $50,000 *
- **Local Adult Correctional Facilities:** Cannot be determined
- **Adult Community Corrections Programs:** Cannot be determined

- **Juvenile Direct Care:** None ($0) **
- **Juvenile Detention Facilities:** None ($0) **

**Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1289 of the Acts of Assembly of 2020 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of $50,000.

Summary of Proposed Legislation:

The proposal amends § 18.2-312 to eliminate exceptions allowing use of tear gas or other gases by a) police officers in performance of their official duties and b) any person in the protection of person, life, or property; however, new language would permit the use of oleoresin capsicum or O.C. spray by any person solely in instances necessary to protect himself or another from the threat of bodily injury or death.

The proposal also adds § 18.2-312(B), which provides that 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 certain conditions are met. The proposal also specifies that in addition to any other penalty authorized by law, a violation of § 18.2-312(B) is grounds for disciplinary action against the law-enforcement officer, including dismissal, demotion, suspension, or transfer of the law-enforcement officer.

Additionally, the proposal amends numerous code sections to declare that no state or local law-enforcement agency shall acquire, purchase, or otherwise accept on any terms certain military property.

Analysis:

According to Circuit Court Case Management System (CMS) data for fiscal year (FY) 2014 through FY2019, eight offenders were convicted under § 18.2-312 for illegal use of tear gas or some other gas. This was the primary, or most serious offense, for only three of the offenders. Of these, two offenders

were convicted of a Class 3 felony for maliciously releasing such a gas; these individuals received sentences 12 months and 6 years, respectively. The third offender was convicted of a Class 6 felony for releasing a gas unlawfully, but not maliciously; this individual was given probation without an active term of incarceration to serve.

Available data are insufficient to determine how many additional felony convictions may result if the proposal is enacted.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal removes some exceptions in current *Code* and, thereby, potentially expands the application of two existing felonies to include additional circumstances. In this way, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not provide sufficient detail to determine the number of additional felony convictions that may result from the proposal. For this reason, the impact of the proposal on prison bed space needs cannot be determined.

Local adult correctional facilities. The proposal may increase the local-responsible (jail) bed space needs; however, the magnitude of the impact on jail bed space needs cannot be estimated with existing data.

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for additional offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections cannot be quantified.

Virginia's sentencing guidelines. Convictions under § 18.2-312 are not covered by the sentencing guidelines as the primary (most serious) offense. However, convictions under this statute 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 proposal is not expected to impact direct care (juvenile correctional center or alternative commitment placement) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to impact the bed space needs of juvenile detention facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1289 of the Acts of Assembly of 2020 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of $50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is $0 for periods of commitment to the custody of the Department of Juvenile Justice.

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