



## **Fiscal Impact Statement for Proposed Legislation**

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### ***Virginia Criminal Sentencing Commission***

#### **House Bill No. 5069** **Amendment in the Nature of a Substitute** ***(Patron Prior to Substitute – Carroll Foy)***

**LD#:** 20201037

**Date:** 08/27/2020

**Topic:** Use of neck restraints by law enforcement

#### **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:**  
Cannot be determined\*\*
- **Juvenile Detention Facilities:**  
Cannot be determined\*\*

\*\*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.

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#### **Summary of Proposed Legislation:**

The proposal would add § 18.2-51.8 to the *Code* to prohibit law enforcement officers from using neck restraints, as defined in the bill. Under the proposal, use of a neck restraint by a law enforcement officer in the performance of his or her duties would be punishable as a Class 6 felony. This felony would constitute a separate and distinct offense and would not prohibit prosecution under any other applicable provisions of law.

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#### **Analysis:**

Available data are insufficient to determine how many additional felony convictions may result if the proposal is enacted. However, individuals convicted under the proposed provision may be sentenced similarly to those convicted of a Class 6 felony for unlawful wounding under § 18.2-51.

According to fiscal year (FY) 2018 and FY2019 Sentencing Guidelines data, 857 offenders were convicted of unlawful wounding (§ 18.2-51). In 726 of the cases, unlawful wounding was the primary (or most serious) offense. More than one-third (36.1%) of these offenders received a state-responsible (prison) term for which the median sentence was 1.6 years. Another 37.7% received a local-responsible (jail) term with a median sentence of six months. The remaining 26.6% did not receive an active term of incarceration to serve after sentencing.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Because it creates a new Class 6 felony for which imprisonment is authorized, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing data do not provide sufficient detail to estimate the number of new felony convictions that would result from enactment of the proposal. Therefore, the impact on prison bed space needs cannot be determined.

**Local adult correctional facilities.** The proposal may increase 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 the proposed § 18.2-51.8 would not be covered by the sentencing guidelines when the offense is the primary, or most serious, offense in a case. 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 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.

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**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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

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