



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 5125 (Patron – Gilbert)

LD#: 20200673

Date: 08/17/2020

Topic: Weapons possession at unlawful assemblies

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.

Summary of Proposed Legislation:

The proposal amends §§ 18.2-405 and 18.2-406 of the *Code of Virginia*, relating to unlawful assemblies. Currently, under § 18.2-405, participating in riot is a Class 1 misdemeanor or, if the individual carried a firearm or other deadly or dangerous weapon during the riot, a Class 5 felony; under § 18.2-406, participating in an unlawful assembly is a Class 1 misdemeanor or, if the individual carried a firearm or other deadly or dangerous weapon during the unlawful assembly, a Class 5 felony. The proposal explicitly provides that (i) a projectile of any kind; (ii) a laser, a laser gun sight, or any device that simulates a laser; (iii) a blunt instrument; or (iv) a shield is a dangerous weapon for the purposes of carrying a dangerous weapon during a riot or unlawful assembly.

Analysis:

According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2014 through FY2019, no felony convictions under § 18.2-406 were observed during this time period.

According to General District Court CMS data for FY2014 through FY2019, three offenders were convicted of a Class 1 misdemeanor for participating in an unlawful assembly under § 18.2-406. Of these, two did not receive an active term of incarceration to serve after sentencing, while the remaining offender was sentenced to serve one day in jail.

According to the Circuit Court CMS for fiscal year FY2014 through FY2019, three offenders were convicted of a Class 5 felony under § 18.2-405 for participating in a riot while carrying a firearm or other

deadly/dangerous weapon. This offense was the primary, or most serious, offense for two offenders, who were sentenced to serve state-responsible (prison) terms of one year each.

According to General District Court CMS data for FY2014 through FY2019, eight offenders were convicted of a Class 1 misdemeanor for participating in a riot under § 18.2-405. One of the eight offenders did not receive an active term of incarceration to serve after sentencing. Six offenders received jail terms of 10 days and one was sentenced to two months.

Impact of Proposed Legislation:

State adult correctional facilities. By potentially expanding the applicability of felony offenses, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, existing data sources do not contain sufficient detail to estimate the number of additional felony convictions that may occur following enactment of the proposal. Therefore, the magnitude of the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal may increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be determined.

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

Virginia's sentencing guidelines. The sentencing guidelines do not cover felony violations of §§ 18.2-405 and 18.2-406. However, such convictions may 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 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.