



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1936 Amendment in the Nature of a Substitute Proposed by the Governor (Patron Prior to Substitute – Watts)

LD#: 21200845

Date: 03/19/2021

Topic: Robbery

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **Local Adult Correctional Facilities:**
None
- **Adult Community Corrections Programs:**
None

- **Juvenile Direct Care:**
Cannot be determined*
- **Juvenile Detention Facilities:**
Cannot be determined*

* Provided by the Department of Juvenile Justice

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only address the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

Summary of Proposed Legislation:

The proposal amends § 18.2-58 of the *Code* to redefine robbery and to create degrees of punishment based on characteristics of the offense. Under the proposal, any person who commits a robbery by causing serious bodily injury to or the death of any other person is guilty of a Class 2 felony, which is punishable by confinement in a state correctional facility for a maximum term of life. Any person who commits robbery by using or displaying a firearm, as defined in § 18.2-308.2:2, in a threatening manner is guilty of a Class 3 felony, which is punishable by confinement in a state correctional facility for a maximum term of 20 years. Any person who commits robbery by using physical force not resulting in serious bodily injury, or by using or displaying a deadly weapon other than a firearm in a threatening manner, is guilty of a Class 5 felony, which is punishable by confinement in a state correctional facility for a maximum term of 10 years. Any person who commits robbery by using threat or intimidation or any other means not involving a deadly weapon is guilty of a Class 6 felony (imprisonment up to five years). The proposal also limits § 16.1-269.1(C), related to the transfer of juveniles for trial in circuit court, such that only the proposed Class 2 and Class 3 felony robberies would remain subject to the mandatory transfer provisions found in this subsection.

Under current law, any robbery is punishable by confinement in a state correctional facility for life or any term not less than five years; however, a judge may suspend time from the imposed sentence.

Analysis:

According to fiscal year (FY)2019 and FY2020 Sentencing Guidelines (SG) data, a conviction for robbery (§ 18.2-58) was the primary (or most serious) offense in 887 sentencing events. The majority of the offenders (88.2%) were sentenced to a state-responsible (prison) term for which the median sentence was 5.6 years. Another 4.7% of the offenders received a local-responsible (jail) term with a median

sentence length of six months. The remaining 7.1% of offenders did not receive an active term of incarceration to serve after sentencing.

The proposal does not affect § 18.2-58.1(A), pertaining to carjacking. Carjacking is punishable by 15 years to life in prison. Thus, under the proposal, carjacking would carry a higher statutory maximum penalty (life) than all proposed robberies categories other than the newly designated Class 2 felonies and would supersede these robberies as the primary offense in a sentencing event. Therefore, sentencing events including a carjacking conviction are reported below separately from other robbery events.

While specific elements of robbery cases are not captured in automated data systems, elements of the proposal can be approximated using sentencing guidelines data. The sentencing guidelines for robbery offenses include a factor to account for victim injury. A guidelines score for life threatening injury to a victim can be used to identify offenders who would likely qualify for the proposed robbery punishable as a Class 2 felony. A guidelines score for use of a firearm (which includes a threat to use a firearm) can be utilized to identify offenders who may qualify for the proposed robbery punishable as a Class 3 felony. Similarly, a score indicating the use of a weapon other than a firearm may approximate the proposed robbery punishable as Class 5 felony. Sentencing outcomes in robbery cases, based on the elements scored on the guidelines, are shown in Table 1 below. Among these cases, 148 sentencing events (17.7%) included additional offenses which may have a statutory maximum greater than or equal to the robbery offense under the proposal. The top 5 offense types for potential primary offenses were burglary, larceny, kidnapping, narcotics, and assault.

Larceny from a person (e.g., pickpocketing) involving \$5 or more is currently a felony punishable by imprisonment of 1 to 20 years (§ 18.2-95).

Table 1: Offenders Convicted of Robbery As Primary Offense (Excluding Carjacking Events)
FY2019-FY2020

Primary Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence	Cases Sentenced Above Proposed Statutory Maximum
Robbery with life threatening injury (may not include serious bodily injury)	144	2.1%	2.8%	6 months	95.1%	7.4 years	N/A (Life sentence maximum)
Robbery with an additional offense of use of firearm (includes attempted use of firearm)	243	0.4%	0.4%	11 months	99.2%	7.5 years	9 (3.7%) Sentenced to more than 20 years
Robbery with use of weapon other than a firearm	109	8.3%	8.3%	6 months	83.5%	4.5 years	13 (11.9%) Sentenced to more than 10 years
Robbery not involving a deadly weapon	338	14.5%	8.3%	6 months	77.2%	4.0 years	81 (24.0%) Sentenced to more than 5 years
Summary	834	7.4%	5.0%	6 months	87.5%	5.5 years	103 (12.4%)

Source: Virginia Criminal Sentencing Commission - Sentencing Guidelines Database, FY2019-FY2020

An additional 53 robbery sentencing events within this time period included a carjacking conviction under § 18.2-58.1(A). Among these cases, 15 also involved a robbery conviction under § 18.2-58. The proposal would not amend § 18.2-58.1(A), so the baseline statutory penalties for carjacking would remain the same. However, carjacking cases involving life threatening or serious bodily injury (26.4% of this sample) may be punishable as Class 2 felonies under proposed § 18.2-58. In these cases, the statutory maximum would remain a life sentence, but the statutory minimum would increase from 15 years to 20 years.

Table 2: Offenders Convicted of Carjacking (Primary Offense is Any Robbery), FY2019-FY2020

Offense Involved	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence	Cases with life threatening or serious bodily injury
Carjacking with use of gun or simulated gun	15	0.0%	0.0%	N/A	100.0%	12.0 years	2 (13.3%)
Carjacking (without gun or simulated gun)	38	2.6%	0.0%	N/A	97.4%	7.0 years	12 (31.6%)
Summary	53	1.9%	0.0%	N/A	98.1%	8.0 years	14 (26.4%)

Source: Virginia Criminal Sentencing Commission - Sentencing Guidelines Database, FY2019-FY2020

Impact of Proposed Legislation:

State adult correctional facilities. The proposal would reduce the statutory maximum penalty for the majority of robbery offenses. Currently, the statutory penalty range for all robberies is five years up to life in prison. Except in cases causing serious bodily injury to or the death of another person, the proposed statutory maximum would be 5, 10, or 20 years based on other elements of the robbery offense. Median prison sentences in recent robbery cases are within the reduced statutory maximums proposed. The proposal is not expected to increase the state-responsible (prison) bed space needs of the Commonwealth during the six-year window specified by § 30-19.1:4 for legislative impact statements.¹

Local adult correctional facilities. By reducing the penalty structure for most robberies, the proposal is not likely to increase local-responsible (jail) bed space needs. Current sentencing patterns include cases sentenced to jail and these sentencing patterns are not likely to change based on the proposal.

Adult community corrections resources. The proposal will not increase the need for adult community corrections resources.

Virginia's sentencing guidelines. Violations of § 18.2-58 are currently covered by the sentencing guidelines. If the legislation is enacted, the guidelines recommended range would be capped at the applicable statutory maximum. The Sentencing Commission in the future would conduct detailed analyses of sentencing patterns under the new provisions to determine if revisions to the guidelines are necessary.

¹ Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only address the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

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 \$0 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.

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