



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1515 (Patron – Adams, D.M.)

LD#: 23101936

Date: 12/14/2022

Topic: Possession/use of an “auto sear”

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 2 of the Acts of Assembly of 2022, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include 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 § 18.2-289 of the *Code of Virginia* relating to the possession or use of a machine gun in the commission of a violent crime. Currently, it is a Class 2 felony to possess or use a machine gun in the perpetration or attempted perpetration of a crime of violence. The proposal expands the existing Class 2 felony to include the possession or use of an “auto sear” in the perpetration or attempted perpetration of a crime of violence. An “auto sear” is defined as “a small device with a combination of parts made of metal or plastic designed and intended for use in converting a weapon into a machine gun, as defined by 26 U.S.C. 5845(b)”. Similarly, the proposal expands an existing Class 4 felony under § 18.2-290 to make it unlawful to possess or use an auto sear for an offensive or aggressive purpose.

Analysis:

According to fiscal year (FY) 2017 through FY2022 Circuit Court Case Management System (CMS) data, eight offenders were convicted of a Class 4 felony under § 18.2-290 for possession or use of a machine gun for an offensive or aggressive purpose. For five offenders, this offense was the primary (most serious) offense at sentencing. One offender (20%) was sentenced to a local-responsible (jail) term of three months; the remaining four offenders (80%) were sentenced to state-responsible (prison) terms with a median sentence of 2.7 years. There were no convictions under § 18.2-289 for possession or use of a machine gun in the perpetration or attempted perpetration of a crime of violence.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of two existing felonies, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, available data do not provide sufficient detail to estimate the number of new felony convictions that may result from the proposal. Therefore, the magnitude of the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, by expanding the applicability of existing felony offenses, the proposal may increase local-responsible (jail) bed space needs. Because the number of new convictions resulting from the proposal cannot be determined, the magnitude of the impact on jail beds cannot be estimated.

Adult community corrections programs. 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 that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's Sentencing Guidelines. Convictions under the affected statutes are not covered by the Sentencing Guidelines as the primary, or most serious, offense in a case. A conviction under one of these provisions, however, could augment the Guidelines recommendation (as an additional offense) 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 2 of the Acts of Assembly of 2022, Special Session I, 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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