



## Fiscal Impact Statement for Proposed Legislation

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### *Virginia Criminal Sentencing Commission*

#### House Bill No. 2360 (Patron – Webert)

LD#: 23103699

Date: 01/10/2023

Topic: Mandatory minimum sentences for certain firearm offenses

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$50,681,842 (1,035 beds)\*
- **Local Adult Correctional Facilities:**  
None (\$0)
- **Adult Community Corrections Programs:**  
None (\$0)

- **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 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.

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#### Summary of Proposed Legislation:

The proposal increases the mandatory minimum sentence required for convictions under § 18.2-53.1 for using a firearm in the commission of certain felonies from three to five years for the first offense and from five to ten years for any second or subsequent offense. These mandatory terms must run consecutively with any punishment received for the primary or triggering felony.

The proposal also raises the penalty for possession of a firearm by a convicted felon (§ 18.2-308.2) from a Class 6 to a Class 5 felony and increases the mandatory minimum penalty for a felon possessing a firearm from two to five years for a person previously convicted of nonviolent felony within the prior 10 years and from five to ten years for a person with a prior violent felony conviction.

Finally, the proposal increases the punishment from a Class 6 to a Class 5 felony and the mandatory minimum sentence from five to ten years for knowingly possessing a firearm within a school and displaying such weapon in a threatening manner or possessing the weapon in a school with the intent to use it (§ 18.2-308.1(C)).

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#### Analysis:

According to fiscal year (FY) 2021 and FY2022 Circuit Court Case Management System (CMS) data, a total of 1,937 offenders were convicted of a completed felony offense under §§ 18.2-53.1, 18.2-308.1(C) or 18.2-308.2 and, therefore, were subject to the mandatory minimum sentences specified in these sections.

The firearm conviction under § 18.2-53.1 was most frequently accompanied by a robbery, felony assault, or murder conviction. Firearm convictions carrying mandatory minimum terms under § 18.2-308.2 were most frequently accompanied by a felony offense involving possession, distribution, etc. of Schedule I/II drugs.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By raising existing felonies and increasing mandatory minimum penalties for firearm-related offenses under §§ 18.2-53.1, 18.2-308.1(C) and 18.2-308.2, the proposal is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. The impact is estimated to be 1,035 beds statewide by FY2029. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$50,681,842.

**Estimated Six-Year Impact in State-Responsible (Prison) Beds**

FY24	FY25	FY26	FY27	FY28	FY29
0	8	200	574	883	1,035

**Local adult correctional facilities.** The proposal is not expected to increase local-responsible (jail) bed space needs.

**Adult community corrections resources.** The proposal is not expected to increase the need for community corrections resources and will delay the need for services for some offenders affected by the proposal, as they will stay in prison longer prior to being released to the community.

**Virginia's Sentencing Guidelines.** Convictions under §§ 18.2-53.1 and 18.2-308.2 are covered by the Sentencing Guidelines. A felony offense under § 18.2-308.1(C) is not covered as the primary (or most serious) offense. Such a conviction may augment the Guidelines recommendation (as an additional offense) if the most serious offense at sentencing is covered by the Guidelines. In any case in which the Guidelines recommended range is less than the mandatory minimum sentence required by law, the mandatory minimum sentence takes precedence over the Guidelines. No adjustment to the Guidelines would be necessary under the proposal.

**Juvenile direct care.** According to the Department of Juvenile Justice (DJJ), 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 is \$50,681,842 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.**

**Assumptions underlying the analysis include:**

**General Assumptions**

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety and Homeland Security's Committee on Offender Population Forecasting in 2022.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety and Homeland Security's Committee on Offender Population Forecasting and approved in 2022.
3. Cost per prison bed was assumed to be \$48,958 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*

**Assumptions relating to offenders**

1. Analysis includes all cases involving a completed felony offense currently carrying mandatory minimum terms under §§ 18.2-53.1, 18.2-308.1 (C), or 18.2-308.2 as the primary (most serious) offense in the case or as an additional offense to a more serious felony.

**Assumptions relating to sentencing and time served**

1. The impact of the proposed legislation, assumed to be effective on July 1, 2023, is phased in to account for case processing time.
2. It was assumed that all eligible offenders under §§ 18.2-53.1, 18.2-308.1(C), or 18.2-308.2 would be sentenced to the proposed mandatory minimum term of imprisonment that would run consecutively with any other sentence upon a conviction as proposed. Identified offenders who received sentences less than the proposed mandatory minimums were assumed to serve the mandatory minimum term specified in the proposal. Offenders currently receiving sentences exceeding the proposed mandatory minimum were assumed to be unaffected by the proposed legislation.
3. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of February 28, 2020. At that time, felons could earn a maximum of 4.5 days for every 30 days served. Beginning July 1, 2022, most nonviolent felons were eligible for higher rates of earned sentence credits (up to 15 days for every 30 days served). Violent felons continue to earn a maximum of 4.5 days for every 30 days served. For affected offenders sentenced during the forecast horizon, the overall average rate of sentence credits earned by individuals convicted of weapons offenses was estimated to be 23.2% of the total sentence; for individuals convicted of the weapons offense along with a violent offense, the overall average rate of sentence credits was estimated to be 8.1% of the total sentence.

**Limitations**

1. The analysis does not include cases from Alexandria as data from that jurisdiction are unavailable.

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