



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1139

(Patrons-- Boysko, Mason, Barker, Bell, Deeds, Ebbin, Favola, Hashmi, Howell, Lucas, McClellan, McPike, Morrissey, Petersen, Saslaw, Spruill and Surovell)

LD#: 23104008

Date: 01/10/2023

Topic: Storage of firearms; minor present

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
None (\$0) **
- **Juvenile Detention Facilities:**
None (\$0) **

** 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 adds § 18.2-308.7:1 to require any person who possesses a firearm in a residence where such person knows or reasonably should know that a minor is present to store such firearm unloaded in a locked container, compartment, or cabinet and to store all ammunition in a separate locked container, compartment, or cabinet. The bill requires that the key or combination to such locked containers, compartments, or cabinets be inaccessible to any minor. The bill provides that a violation is a Class 1 misdemeanor, and, in a case where there is more than one firearm stored in violation of these provisions, a violation for each such firearm shall constitute a separate Class 1 misdemeanor. The bill exempts any person in lawful possession of a firearm who carries such firearm on or about his person, the storage of antique firearms, and the lawful authorization of a minor to access a firearm.

Pursuant to § 18.2-311.2, a third or subsequent Class 1 misdemeanor weapon violation (defined in Article 4, 5, 6, or 7 of Chapter 7 of Title 18.2) is punishable as a Class 6 felony. The proposed Class 1 misdemeanor would be covered by this enhanced penalty provision.

Under current law, which the bill does not change, it is a Class 1 misdemeanor for any person to recklessly leave a loaded, unsecured firearm in such a manner as to endanger the life or limb of any child under the age of 14 (§ 18.2-56.2). Prior to July 1, 2020, this offense was a Class 3 misdemeanor.

Currently, under § 18.2-371.1(B), any parent, guardian, or other person responsible for the care of a child under the age of 18 is guilty of a Class 6 felony if his willful act or omission in the care of such child was so gross, wanton, and culpable as to show a reckless disregard for human life.

Analysis:

Existing data sources do not contain sufficient detail to identify the number of individuals who could be convicted of the proposed Class 1 misdemeanor for inappropriately storing a firearm where a minor is present.

Offenders convicted of the proposed Class 1 misdemeanor who accumulate three or more weapon convictions could be found guilty of a Class 6 felony under § 18.2-311.2. According to Circuit Court Case Management System (CMS) data for fiscal year (FY) 2017 through FY2022, three offenders were convicted of a felony under § 18.2-311.2 for a third or subsequent weapon offense. The felony violation of § 18.2-311.2 was the primary, or most serious, offense for only one of these offenders. This offender received a state-responsible (prison) sentence of 1.3 years.

According to the General District Court CMS data for the same six-year period, eight offenders were convicted of a Class 1 misdemeanor under § 18.2-56.2(A) for leaving a loaded, unsecured firearm in such a manner as to endanger the life or limb of a child under the age of 14. Six of the eight were convicted while the offense was classified as a Class 3 misdemeanor (punishable by fine only). Two offenders were convicted of the offense after it was increased to a Class 1 misdemeanor. One of these two offenders did not receive an active term of incarceration to serve, while the other received a local-responsible (jail) term of 24 months for multiple violations.

Circuit Court CMS data for FY2017-FY22 indicate that 1,612 offenders were convicted of a Class 6 felony under § 18.2-371.1(B) for gross, wanton, and reckless care of a child. For 843 offenders, this was the primary (or most serious) offense at sentencing. Of these, 46.7% received a local jail term with a median sentence of 3.0 months. Another 16.8% received a state prison term for which the median sentence was 1.5 years. The remaining 36.4% did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of an existing Class 6 felony, 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, the impact of the proposal on local-responsible (jail) bed space needs cannot be determined.

Adult community corrections resources. The impact on state community corrections resources and local community-based probation services cannot be estimated.

Virginia's Sentencing Guidelines. Convictions under § 18.2-311.2 are not covered by the Sentencing Guidelines as the primary, or most serious, offense in a case. Such a conviction 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 correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase direct care (juvenile correctional center or alternative commitment placement) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal will not increase the bed space needs of juvenile detention facilities.

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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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