



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 173 Amendment in the Nature of a Substitute Proposed by the Governor (Patron Prior to Substitute – Simon)

LD#: 24109222

Date: 03/26/2024

Topic: Use or display of a firearm in commission of a felony

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$64,292 (1 bed)*
- **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.

Summary of Proposed Legislation:

Currently, under § 18.2-53.1, using a firearm in the commission of certain felonies carries a three-year mandatory minimum term of incarceration for the first offense, while a second or subsequent offense carries a five-year mandatory term. These mandatory terms must run consecutively with any punishment received for the primary or triggering felony. Under the proposal, the mandatory minimum for a second or subsequent offense would increase from five to ten years.¹

The bill also expands the applicability of § 18.2-53.1 to include the use or display of a plastic firearm, as defined in § 18.2-308.5, during the commission of specified felonies.

Analysis:

According to fiscal year (FY) 2022 and FY2023 Circuit Court Case Management System (CMS) data, 55 offenders were convicted of a completed felony for using a firearm during the commission of certain felonies as a second or subsequent offense in violation of § 18.2-53.1. The firearm conviction was most frequently accompanied by a robbery, felony assault, or murder conviction.

¹ Under current law, felony offenses defined in § 18.2-53.1 are eligible for the enhanced sentence credits specified in § 53.1-202.3, whereby offenders serve a minimum of 67% of the sentence ordered by the court. In most cases, however, violations of § 18.2-53.1 accompany other felonies that are not eligible for the enhanced sentence credits. Language in the Appropriation Act adopted by the 2023 General Assembly (Special Session I) provides that, notwithstanding the provisions of § 53.1-202.3, an individual is not eligible for the enhanced sentence credits for any offense if, during the same term of incarceration, he is also serving time for one or more of the exclusionary felonies enumerated § 53.1-202.3(A). The proposed legislation does not change the earned sentence credits available to offenders convicted of these felonies.

Impact of Proposed Legislation:

State adult correctional facilities. By increasing the existing mandatory minimum penalty for a second or subsequent offense under § 18.2-53.1 and expanding the applicability of the same section, the proposal is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. These modifications are expected to increase bed space needs by at least one bed by FY2030. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$ 64,292. There may be additional offenders who would be affected by the proposed expansion of § 18.2-53.1 to cover plastic firearms; however, such cases could not be identified with the available data. Lastly, the majority of the impact would occur beyond the six-year forecast window required by § 30-19.1:4.

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

FY25	FY26	FY27	FY28	FY29	FY30
0	0	0	0	0	1

Local adult correctional facilities. The proposal is not expected to impact the need for local-responsible (jail) beds, since some offenders currently sentenced to jail would be required to serve a state-responsible (prison) term under the proposal.

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 are covered by the Sentencing Guidelines when this offense is the primary, or most serious, offense in a case. 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. For Guidelines purposes, existing felonies under § 18.2-53.1 are defined as violent (§ 17.1-805(C)). 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.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$64,292 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's Committee on Inmate Forecasting in 2023.
2. New cases resulting in state-responsible sentences were based on forecasts approved by the Secretary of Public Safety's Committee on Inmate Forecasting in 2023.
3. Cost per prison bed was assumed to be \$52,894 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 for a second or subsequent offense under § 18.2-53.1 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, 2024, is phased in to account for case processing time.
2. It was assumed that all eligible offenders under §18.2-53.1 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 September 30, 2023. 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 these individuals was estimated to be 9.93%

.Limitations

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

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