



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 44

Amendment in the Nature of a Substitute

(Patrons Prior to Substitute – VanValkenburg and Ebbin)

LD#: 24107464

Date: 02/12/2024

Topic: Child gaining possession of a firearm; penalty to parent, etc.

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:**
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 1 of the Acts of Assembly of 2023, 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 § 18.2-371.1 to establish a new felony offense relating to causing or enabling child to gain possession of a firearm. Currently, under § 18.2-371.1(A), it is a Class 4 felony for any parent, guardian, etc., either by willful act or omission, to cause or permit serious injury to the life or health of a child. Under § 18.2-371.1(B), a parent, guardian, etc., whose willful act or omission in the care of a child was so gross, wanton, and culpable as to show reckless disregard for human life is guilty of a Class 6 felony.

Under the proposal, any parent, guardian, or other person who is 18 years of age or older responsible for the care of a child under the age of 18 whose willful act or omission causes or enables that child to gain possession of a firearm (i) after having received notice of a preliminary determination that the child poses a threat of violence or physical harm to self or others or (ii) when such parent, etc. responsible for the care of the child knows or reasonably should know that such child has been charged, convicted, or adjudicated delinquent of a violent juvenile felony (as defined in § 16.1-228) would be guilty of a Class 5 felony.

The proposal also specifies that no person would be subject to the proposed felony if certain enumerated conditions are satisfied.

Lastly, the proposal amends § 53.1-202.3 to exclude the proposed felony from the list of offenses under § 53.1-202.3 (A) for which, a maximum of 4.5 sentence credits may be earned for each 30 days served on a sentence.¹

Analysis:

Existing databases do not provide sufficient detail to identify the number of new convictions likely to result from enactment of the proposal.

According to Sentencing Guidelines data for fiscal year (FY) 2018 through FY2023, 1,493 offenders were convicted of a Class 6 felony under § 18.2-371.1(B) for gross, wanton, and reckless care of a child. For 803 offenders, this was the primary (or most serious) offense at sentencing. Of these, 41.3% received a local jail term with a median sentence of 3.2 months. Another 17.0% received a prison term with a median sentence of 1.5 years. The remaining 41.7% did not receive an active term of incarceration to serve after sentencing.

The same data also reveals that 336 offenders were convicted of a Class 4 felony under § 18.2-371.1(A) for child abuse and neglect, causing serious injury to the life or health of a child. For 233 offenders, this offense was the primary (most serious) offense. Of these, 56.2% were sentenced to state-responsible (prison) terms for which the median sentence was 2.0 years. Another 32.2% were sentenced to local jail terms with a median sentence of 6.0 months. The remaining 11.6% did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. By creating a new felony offense, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing data do not provide sufficient detail to estimate the number of new felony convictions that could result from enactment of the proposal; therefore, the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal may also increase local-responsible (jail) bed space needs. However, the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in felony 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. As a newly-defined offense, convictions for the proposed felony would not be covered by the Sentencing Guidelines as the primary, or most serious, offense. Such a conviction, however, could augment the Guidelines recommendation (as an additional offense) if the most serious offense at sentencing is covered by the Guidelines. The proposed felony would not be defined as violent under § 17.1-805(C) for the purposes of the Guidelines. No immediate adjustment to the Guidelines is necessary under the proposal. If the proposal is enacted, the Sentencing Commission in the future would conduct detailed analyses of sentencing patterns under the new provision to determine the feasibility of adding the new felony to the Guidelines system.

¹ As proposed, the new felony offense defined in § 18.2-371.1 (C) is 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.

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 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4 of the Code of Virginia, 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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