



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill 2456 (Patron – Cherry)

LD#: 25102410

Date: 12/30/2024

Topic: Violent felony offenses defined for Sentencing Guidelines enhancements

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 2024, 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 § 17.1-805, by adding and removing certain offenses from the definition of a violent felony for the purposes of Virginia's discretionary Sentencing Guidelines. Defendants with convictions for violent offenses receive enhancements, as required by § 17.1-805, that increase the Guidelines recommended sentences for those individuals.

As proposed, the following offenses will be added to the list of violent offenses defined in § 17.1-805:

- § 18.2-47 - Abduction of a minor (Class 2 felony);
- § 18.2-51.7 - Genital mutilation (Class 2 felony);
- § 18.2-55.1 - Bodily injury caused by hazing (Class 1 misdemeanor);
- § 18.2-64.2 - Carnal knowledge by law enforcement officer, DOC staff, or bail bond person (Class 6 felony);
- § 18.2-144.1 - Killing or severely injuring law enforcement animal (Class 5 felony);
- § 18.2-308.5 - Manufacture, transfer, or possess plastic firearm (Class 5 felony); and
- § 18.2-308.5:1 - Manufacture, transfer, or possess trigger activator (Class 6 felony).

The following statutes are proposed to be removed from the list of violent offenses defined in § 17.1-805:

- § 18.2-60.3 - Felony stalking, 2nd within five years (Class 6 felony);
- § 18.2-89 - Burglary at night while armed (Class 2 felony);

- § 18.2-92 - Burglary with intent to commit misdemeanor (Class 6 felony);
- § 18.2-152.7 - Unlawful computer trespass (Class 6 felony);
- § 18.2-287.2 - Wearing body armor during commission of crime (Class 4 felony);
- § 18.2-355 - Procurement for prostitution that does not involve the use of force, threat, or coercion (Class 3 and 4 felonies);
- § 18.2-366 - Incest between adults that does not involve force, threat, or coercion (Class 5 felony);
- § 18.2-474.1 - Delivery of drugs (Class 5 felony) or weapons (Class 3 felony) to prisoners;
- § 37.2-917 - Escape of sexually violent predator from civil commitment facility (Class 6 felony); and
- § 53.1-203 - Certain felonies by prisoners: escape from a correctional facility, damage to aid escape, possession of instrument to aid escape, possession of unlawful chemicals, possession of Schedule III drug or marijuana, damage of fire protection equipment, and conspiracy to commit an offense in this section (Class 5 and 6 felonies).

Virginia's Sentencing Guidelines apply in approximately 95% of all felony sentencing events in the Commonwealth. Per § 17.1-805, individuals with current or prior convictions for violent felony offenses receive enhancements on the Sentencing Guidelines that increase the recommended sentences for those offenders. Offenders with a prior record containing at least one conviction for a violent crime are subject to degrees of midpoint enhancements based on the nature and seriousness of the offender's criminal history. The most serious prior record receives the largest enhancement. A prior record is labeled as "Category II" if it contains at least one prior violent felony conviction carrying a statutory maximum penalty of less than 40 years, whereas a "Category I" prior record includes at least one violent felony conviction with a statutory maximum penalty of 40 years or more.

Other statutes in the *Code* (§§ 18.2-248, 18.2-308.2, and 18.2-460) contain references to § 17.1-805 in order to define a violent offender or to specify criminal penalties. Statutes related to Virginia's victim assistance fund (§ 19.2-368.2) and the restoration of civil rights (§ 53.1-231.2) also include references to § 17.1-805.

Analysis:

Existing data sources do not contain sufficient information to identify all offenders whose Sentencing Guidelines recommendation would change due to enactment of the proposal. The Guidelines reflect the scores assigned for prior offenses and do not capture the specific offenses in a defendant's prior record.

Based on fiscal year (FY) 2024 Sentencing Guidelines data, 24% of felony defendants were subject to midpoint enhancements because of a current or prior conviction for a felony defined as violent in § 17.1-805. Of the FY2024 cases in which midpoint enhancements were applied, the most common midpoint enhancement applied to offenders with a nonviolent current offense and a Category II prior violent record (prior violent felony with a statutory maximum penalty of less than 40 years). Approximately 70% of the midpoint enhancements were of this type. Another 7% of midpoint enhancements were attributable to offenders with a more serious Category I prior record. About 16% of the enhancements were due to the current offense being a violent offense listed in § 17.1-805. The most substantial midpoint enhancements target offenders with a combination of current and prior violent offenses. Roughly 6% qualified for enhancements for both a current violent offense and a Category II prior record. A very small percentage of cases (1%) were subject to the most extreme midpoint enhancements, triggered by a combination of a current violent offense and a Category I prior record.

Judges concur with Virginia's discretionary Guidelines in the majority of felony cases. In FY2024, the overall Guidelines concurrence rate was 84%; however, the compliance rate in midpoint enhancement cases was somewhat lower, at 80%. Since the inception of the truth-in-sentencing Guidelines, judges have departed from the Guidelines recommendation more often in midpoint enhancement cases than in cases without enhancements. When departing from enhanced Guidelines recommendations, judges sentence below the Guidelines range in 51% of cases and above the Guidelines range in 49% of cases.

Concurrence, while generally lower in midpoint enhancement cases than in other cases, varies across the different types and combinations of enhancements, with concurrence ranging from 75% to 81%.

Impact of Proposed Legislation:

State adult correctional facilities. By adding and removing offenses from the list of violent felonies in § 17.1-805, the proposal would increase the Sentencing Guidelines recommendation for some offenders and decrease the recommendation for others. Existing databases do not provide sufficient detail to determine the number of affected offenders or the changes in sentencing patterns likely to result from enactment of the proposal. Thus, the net effect of the proposal on future state-responsible (prison) bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal's impact on local-responsible (jail) beds cannot be quantified.

Adult community corrections resources. The potential impact on community corrections resources cannot be estimated.

Virginia's Sentencing Guidelines. The proposal will require re-programming of the automated Sentencing Guidelines system (known as SWIFT) and significant revisions to Guidelines manuals. In addition, Virginia Crime Codes must be created to precisely identify elements of offenses specified in 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 2024, 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.