



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill 881
Amendment in the Nature of a Substitute
Proposed by the Governor
(Patron Prior to Substitute– Ebbin)

LD#: 25108321

Date: 03/24/2025

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

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **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

* 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:

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. Also, the proposal adds a plastic firearm as defined in § 18.2-308.5 to the list of the firearms covered by § 18.2-53.1.¹ Lastly, the proposal specifies that a person must **knowingly** manufacture, import, sell, transfer, or possess a plastic firearm to be convicted of the Class 5 felony defined in § 18.2-308.5.

Analysis:

According to fiscal year (FY) 2023 and FY2024 Circuit Court Case Management System (CMS) data, 741 offenders were convicted of a completed felony for using a firearm during the commission of certain

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. The proposed legislation does not change the earned sentence credits available to offenders convicted of these felonies.

felonies in violation of § 18.2-53.1. The firearm conviction was most frequently accompanied by a robbery, felony assault, or murder conviction.

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 existing felonies under the same section, the proposal is expected to increase the 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 enactment of the proposal. Therefore, the magnitude of the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. The proposal is not expected to impact the need for local-responsible (jail) beds, since offenders who are currently convicted of a completed offense under § 18.2-53.1 must be sentenced to a state-responsible (prison) term.

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 of the Code of Virginia, 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.

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