



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 791 Amendment in the Nature of a Substitute (Patron Prior to Substitute – Henson)

LD #: 24106299

Date: 01/29/2024

Topic: Possessing, etc. a pneumatic gun on school property

#### 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 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 expands the applicability of § 18.2-308.1 to include a pneumatic gun as a prohibited weapon on school property.

Currently, it is a Class 1 misdemeanor to possess any enumerated weapons other than a firearm on school property under § 18.2-308.1(A). The proposal would include a pneumatic gun (as defined in § 15.2-915.4) in the list of prohibited weapons under the same section. Furthermore, the proposal provides that any person who commits a second or subsequent violation involving a pneumatic gun on school property would be guilty of a Class 6 felony.<sup>1</sup>

#### Analysis:

Existing databases do not provide sufficient detail to identify the number of new convictions likely to result from enactment of the proposal. However, individuals convicted under the proposal may be

<sup>1</sup> Under current law, a newly proposed felony offense defined in § 18.2-308.1 (A) would be eligible for the enhanced sentence credits specified in § 53.1-202.3, whereby offenders will 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 such felony.

sentenced similarly to offenders who are currently convicted for violating §§ 18.2-308.1 (A) or 18.2-308.1 (B) (if as proposed, an offense involving a pneumatic gun is a second or subsequent offense).

According to the General District Court Case Management System (CMS) for fiscal year (FY) 2018 through FY2023, 52 offenders were convicted of a Class 1 misdemeanor under § 18.2-308.1(A) for possessing any weapon on school property. Of these, 30.8% were sentenced to a local-responsible (jail) sentence with a median sentence of 1.0 months. The remaining 69.2% did not receive an active term of incarceration to serve after sentencing.

According to Sentencing Guidelines data for the same six-year period, 35 offenders were convicted of a Class 6 felony under § 18.2-308.1(B) for possessing a firearm on school property etc.. For 20 offenders, this was the primary (or most serious) offense at sentencing. Of these, 14 offenders (70%) did not receive an active term of incarceration to serve after sentencing. Another five offenders (25%) received a local jail term with a median sentence of 3 months. The remaining one offender (5%) received a state-responsible (prison) term for one year.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By establishing a new Class 6 felony for a second or subsequent violation involving a pneumatic gun under § 18.2-308.1(A), the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal; therefore, the magnitude of the impact on prison bed space needs cannot be quantified.

**Local adult correctional facilities.** Similarly, by including a pneumatic gun in the list of prohibited weapons under § 18.2-308.1(A), the proposal may 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 new felony, convictions under the proposed § 18.2-308.1(A) would not be covered by the Sentencing Guidelines as the primary, or most serious, offense. A conviction under this provision, 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 Guidelines purposes. No adjustment to the Guidelines would be necessary under 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.

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**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, 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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