



Fiscal Impact Statement for Proposed Legislation
Virginia Criminal Sentencing Commission

House Bill No. 36
(Patron – Willett)

LD#: 24101071

Date: 12/04/2023

Topic: Use of firearm by minor; penalty to owner

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 (\$) **
 - **Juvenile Detention Facilities:**
None (\$) **
- ** 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 adds § 18.2-56.3 to the *Code of Virginia* relating to the use or possession of a firearm by a minor in certain circumstances. Under the proposed § 18.2-56.3, if an owner of a firearm allows a minor to possess his firearm, and the minor (i) uses the firearm in an unlawful manner, (ii) possesses the firearm within any school zone or within any building or property deemed as a gun-free zone by a school board, or (iii) uses the firearm to intentionally or with gross negligence cause bodily injury to himself or another person, the owner of the firearm is guilty of a Class 1 misdemeanor. The owner of a firearm is also guilty of a Class 1 misdemeanor if the owner knows or reasonably should have known that a minor was in close proximity to his firearm, and the minor uses the firearm as described in any manner described above. This penalty increases to a Class 5 felony if the owner of the firearm knows or reasonably should have known that the minor who possess or uses his firearm in a manner described above has been charged with, convicted of, or adjudicated delinquent of a violent juvenile felony (as defined in § 16.1-228) or has been the subject of a school-initiated threat assessment that classified the risk posed by the minor as moderate, high, or eminent.¹

Currently, it is a Class 1 misdemeanor for any person to recklessly leave a loaded, unsecured firearm in such a manner as to endanger the life or limb of any child under the age of 14 (§ 18.2-56.2). Prior to July 1, 2020, this offense was a Class 3 misdemeanor.

Under § 18.2-56.1, currently, any person who recklessly handles any firearm so as to endanger the life, limb or property of any person is guilty of a Class 1 misdemeanor. Any person who handles a firearm in a

¹ The proposed felony 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.

manner so gross, wanton, and culpable as to show a reckless disregard for human life and causes the serious bodily injury of another resulting in permanent and significant physical impairment is guilty of a Class 6 felony.

Analysis:

According to the General District Court Case Management System (CMS) for fiscal year (FY) 2018 through FY2023, 12 offenders were convicted of a Class 1 misdemeanor under § 18.2-56.2(A) for leaving a loaded, unsecured firearm in such a manner as to endanger the life or limb of a child under the age of 14. Five of the twelve were convicted while the offense was classified as a Class 3 misdemeanor (punishable by fine only). Seven offenders were convicted of the offense after it was increased to a Class 1 misdemeanor. Of these, four (57.1%) were sentenced to a local-responsible (jail) sentence with a median sentence of two months, and the remaining three (42.9%) did not receive an active term of incarceration to serve after sentencing. During the same six-year period, 1,559 offenders were convicted of a Class 1 misdemeanor under § 18.2-56.1(A) for reckless handling of a firearm. Of these, 529 (33.7%) were sentenced to local jail terms with a median sentence of one month. The remaining 1,030 offenders (66.1%) did not receive an active term of incarceration to serve after sentencing.

According to the Circuit Court CMS data for the same six-year period, 53 offenders were convicted of a Class 6 felony under § 18.2-56.1(A1) for reckless handling of a firearm resulting in serious bodily injury. For 18 offenders, this offense was the primary (most serious) offense. Of these, six offenders (33.3%) were sentenced to state-responsible (prison) terms for which the median sentence was 1.8 years. Another three offenders (16.7%) were sentenced to local jail terms with a median sentence of six months. The remaining nine offenders (50.0%) 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. By creating a new felony and two new misdemeanor offenses, 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 and misdemeanor 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. 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.

Juvenile direct care. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase direct care (juvenile correctional center or alternative commitment placement) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal will not increase the bed space needs of juvenile detention facilities.

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 \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

firearm15_1071