



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 423 (Patron – Edwards (By Request))

LD #: 22100694

Date: 12/22/2021

Topic: Sentencing guidelines and enhancements for violent felonies

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
None (\$0)
- **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

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 § 17.1-805.1 to clarify the authority of the Virginia Criminal Sentencing Commission to recommend revisions to the Sentencing Guidelines based on historical sentencing data, specifically in regards to the size of midpoint enhancements. Under the proposal, any recommendations adopted by the Commission to modify the Sentencing Guidelines midpoint enhancements must be contained in the agency's annual report, as required by § 17.1-803, and will only become effective if the recommendation is accepted by the General Assembly in accordance with § 17.1-806.

Unlike most states, Virginia's Sentencing Guidelines are based on analysis of historical sentencing data. The *Code of Virginia*, in § 17.1-803, requires the Commission to develop guidelines that take into account historical sentencing practices. In essence, the Guidelines are designed to provide judges with a benchmark of the typical case outcome given the defendant's current offenses and prior record. There is one exception to the historical basis of Virginia's Sentencing Guidelines. Pursuant to § 17.1-805, the Sentencing Guidelines must include midpoint enhancements to increase sentence recommendations for defendants who have been convicted of violent felony offenses (as defined in § 17.1-805(C)). This section of the *Code* specifies enhancements of 100%, 125%, 300% or 500% depending on the nature of the defendant's current and prior convictions for violent felonies. The percent enhancements specified in § 17.1-805 are not based on empirical analysis of sentencing or recidivism data. The General Assembly set the size of these enhancements during a Special Session in 1994. The proposed legislation would clarify the Commission's authority to recommend revisions to the Guidelines based on historical sentencing data. Under the proposal, the Commission would not be required to set the enhancements at 100%, 125%, 300% or 500%, as currently designated in § 17.1-805. Rather, the Commission would be authorized to set the magnitude of midpoint enhancements based on analysis of actual sentencing data for felony offenses. This would allow the Commission to develop Guidelines that better reflect actual sentencing practices and provide judges with the most accurate benchmark of the typical case outcome for felony offenses.

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**Analysis:**

According to FY2020 and FY2021 Sentencing Guidelines data, 17.9% of felony sentencing events included a Guidelines enhancement because the defendant had current or prior conviction for a violent felony (as defined in § 17.1-805). While Virginia's Circuit Court judges concur with the Guidelines at a high rate overall, the data indicate that judges often depart from the Guidelines in cases involving midpoint enhancements required by § 17.1-805. When no enhancements apply, judges concur with the Guidelines in 85.6% of the cases. When enhancements do apply, judges comply at a much lower rate, 71.1%. When judges depart from the Guidelines in midpoint enhancement cases, they nearly always sentence below the range recommended by the enhanced Guidelines.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposed legislation is not expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. No impact on correctional bed space is anticipated because the Commission would analyze sentencing data and integrate current sentencing practices into the Guidelines. By more accurately reflecting current practice in enhancement cases, the Guidelines would provide judges with the most accurate benchmark of the typical case.

**Local adult correctional facilities.** Similarly, the proposal is not expected to impact local-responsible (jail) bed space needs.

**Adult community corrections resources.** The proposal is unlikely to increase the need for adult community corrections resources.

**Virginia's sentencing guidelines.** If the proposal is enacted, the Sentencing Commission will conduct detailed analyses of sentencing patterns to determine if revisions to the Guidelines are necessary. As specified in the proposed § 17.1-805.1, any recommendations adopted by the Commission to modify the Sentencing Guidelines midpoint enhancements must be contained in an annual report, as required by § 17.1-803, and new midpoints will become effective only if the recommendation is accepted by the General Assembly as provided in § 17.1-806.

**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.

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**Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**