



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1247

(Patron – Scott)

Date Submitted: 12/1/03

LD #: 04-0008500

Topic: Possession of firearms following certain criminal convictions

Proposed Change:

The proposal adds § 18.2-308.1:6 to the *Code of Virginia*, making it a Class 6 felony to possess a firearm for a period of five years following a conviction for stalking under § 18.2-60.3 or sexual battery under § 18.2-67.4.

Under current law, felons are restricted from possessing firearms under § 18.2-308.2. Violation of § 18.2-308.2 is punishable as a Class 6 felony and, depending upon the seriousness of the offender's prior record, a two-year or five-year mandatory minimum term applies.

Data Analysis:

According to fiscal year (FY) 2001 and FY2002 Local Inmate Data System (LIDS) data, which contains information on offenders confined pre- or post-trial in jail, there were 588 misdemeanor convictions for stalking under § 18.2-60.3 or sexual battery under § 18.2-67.4. If this proposal is adopted, all of these offenders would be restricted from possessing a firearm for a five-year period following the conviction. The proportion of these offenders who subsequently possess a firearm is not known.

Impact of Proposed Legislation:

The addition of § 18.2-308.1:6 would likely have an impact on both state-responsible (prison) and local-responsible (jail) beds. Application of sentences for similar crimes indicates that the proposal would increase the need for state-responsible (prison) bed space. In this scenario, over the next six years, the net high state-responsible impact would be approximately two beds.

In addition, there will be an impact on local-responsible (jail) bed space; based on the methodology, there will be an increased need for approximately .16 jail bed statewide, for a cost to the state of \$1,795 (using FY2002 jail inmate costs) for reimbursement to localities. There would be \$1,221 in additional costs for the localities for the same partial bed.

The anticipated impact on community corrections programs is unknown because sufficient data is not available to calculate the impact on such programs. However, it is expected to increase the need for probation services from both state and local programs.

The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.

No adjustment to the sentencing guidelines would be necessary under the proposal. If enacted, convictions under the proposed § 18.2-308.1:6 would not be covered by the guidelines as the primary (or most serious) offense, but may augment the guidelines recommendation if a covered offense is the most serious at conviction.

The Department of Juvenile Justice (DJJ) reports that they do not expect an increased need for beds in the Juvenile Correctional Centers (JCC) if the proposal is enacted. Nonetheless, if a juvenile is committed under the proposed § 18.2-308.1:6, the Department's Length of Stay (LOS) guidelines would require a minimum commitment of 6-12 months, based on a Class 6 felony.

Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY05	FY06	FY07	FY08	FY09	FY10
1	1	2	2	2	2

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$39,507 for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary's Committee on Inmate Forecasting in 2003.
2. New cases representing felony sentences were based on the forecasts of misdemeanants developed by the Virginia Criminal Sentencing Commission using the Local Inmate Data System (LIDS) database.
3. Cost per prison bed was assumed to be \$22,606 per year as provided by the Department of Planning and Budget to the Commission pursuant to §30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*
4. Cost per jail bed was based on The Compensation Board's FY2002 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$29.81 per day or \$10,889 per year. The local cost was calculated by using the daily expenditure cost of \$54.12 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$20.29 per day or \$7,410 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

Assumptions Relating to Sentence Lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2004, is phased in to account for case processing time.
2. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates for those with state responsible (prison) sentences were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2002; for weapons offenses, this rate was 9.81%. Release dates for those with local responsible (jail) sentences were estimated based on the average rate (10.3%) at which inmates in local jails were earning sentence credits in FY2003.
3. Sentences for persons affected by the felony provisions under the proposed legislation were randomly drawn from sentences for persons convicted of § 18.2-308.2 (possession of firearm or concealed weapon by convicted felon); these sentences were drawn from FY1997 and FY1998 (prior to enactment of two and five year mandatory minimums starting in July 1999 for possessing a firearm by a convicted felon).

The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.

4. The number of affected cases was estimated as a percentage of the number of persons convicted for the misdemeanor crimes under §§ 18.2-60.3 (stalking) and 18.2-67.4 (sexual battery). The percentage used was derived from a five-year follow-up of persons convicted of at least one felony (none of which were § 18.2-308.2 convictions) who were subsequently convicted under § 18.2-308.2 within the five years of follow-up. This percentage was .96% for felons sentenced in 1997.

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