



## Impact Analysis on Proposed Legislation

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### *Virginia Criminal Sentencing Commission*

#### **House Bill No. 79**

*As Engrossed*  
*(Patron – Wright)*

**Date Submitted:** 1/27/04

**LD #:** 04-1303556

**Topic:** Possession or transportation of firearms by illegal aliens

#### **Proposed Change:**

This proposal modifies § 18.2-308.2:01 to make it a Class 6 felony for an illegal alien to knowingly and intentionally possess or transport any firearm or to knowingly and intentionally carry, hidden from common observation, any firearm. The proposal includes a definition of illegal alien for the purposes of this section.

#### **Current Practice:**

Currently, § 18.2-308.2:01 does not explicitly prohibit illegal aliens from possessing, transporting or carrying any firearms. Under this statute, it is a Class 6 felony for any person who is not a citizen of the United States or who is not lawfully admitted for permanent residence to knowingly and intentionally possess, transport or carry hidden from common observation an assault firearm. In the 2003 General Assembly, the definition of assault firearm was clarified.

Based on CY2000 and CY2001 Pre/Post-Sentence Investigation (PSI) data, there were no convictions found for the statute as written prior to July 2003. However, during the two-year period, 993 (1.9%) of those convicted of a felony were also reported to the enforcement division of the former Immigration and Naturalization Services (INS, now known as the Bureau of Immigration and Customs Enforcement), and, of those, 52 (.1% of total, 5.2% of those reported to INS) committed crimes that involved a firearm.

Convictions under § 18.2-308.2:01 are not covered by the guidelines as the primary (or most serious) offense at conviction but would augment the guidelines recommendation if a covered offense is the most serious at conviction.

#### **Impact of Proposed Legislation:**

By increasing the number of persons who could be convicted of a Class 6 felony under § 18.2-308.2:01, the proposed legislation may increase state-responsible (prison) bed space needs of the Commonwealth. Since the proposal adds a new crime to § 18.2-308.2:01, data are not available on the number of criminal cases that may result should the proposal be adopted, and it is not known

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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.

how judges will sentence cases involving possession or transport of firearms by persons who are illegal aliens in the United States. Therefore, the impact of the proposal cannot be determined. No adjustment to the sentencing guidelines would be necessary under the proposal.

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

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