



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2286 *Amendment in the Nature of a Substitute* (Patron Prior to Substitute – Webert)

LD#: 15105725

Date: 3/26/2015

Topic: Possession of firearms following certain convictions

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
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 2 of the 2014 Acts of Assembly, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal modifies § 18.2-308.2, relating to the possession and transportation of firearms by persons convicted of certain offenses. Under the proposal, existing provisions that prohibit the possession and transportation of firearms, ammunition, and other specified weapons would not apply to individuals whose right to possess firearms or ammunition was restored under the law of another state. Currently, § 18.2-308.2(B) only exempts members of the Armed Forces, the National Guard, and law-enforcement officers in the performance of their duties and individuals who have been pardoned or have had their political disabilities removed under Virginia law.

Under the proposed § 18.2-308.2(E), any person who knowingly and intentionally possesses, transports, or transports a firearm following a conviction for specified misdemeanor offenses that occurred on or after July 1, 2015 would be guilty of a Class 1 misdemeanor. The prohibition would apply to individuals convicted of assault and battery, stalking (§ 18.2-60.3), and sexual battery (§ 18.2-67.4), if victim of the offense was a family or household member. However, an individual prohibited from possessing a firearm under the proposal would be permitted to petition the circuit court to possess or carry a firearm, if certain conditions are met.

Pursuant to § 18.2-311.2, a third or subsequent Class 1 misdemeanor firearm violation (defined in Article 4, 5, 6, or 7 of Chapter 7 of Title 18.2) is punishable as a Class 6 felony. Also, by prohibiting the possession, etc., of firearms by certain misdemeanants, additional individuals would be ineligible to receive a firearm from a licensed firearms dealer. Currently, under § 18.2-308.2:2(M), purchasing a firearm with the intent to transfer it to an individual who is ineligible to purchase a firearm from a dealer is a Class 4 felony that carries a mandatory minimum term of one year. Offenders who transfer more than one firearm in violation of § 18.2-

308.2:2(M) are subject to a mandatory minimum term of five years. Subsection N of § 18.2-308.2:2 makes it a Class 4 felony to solicit, employ, or assist any person in purchasing a firearm in violation of § 18.2-308.2:2(M); a violation of this subsection also carries a mandatory minimum term of five years.

Analysis:

During fiscal year (FY) 2013 and FY2014, a total of 12,703 offenders were convicted of a misdemeanor under § 18.2-57.2 for assaulting a family or household member (as the primary, or most serious, offense) in general district court, juvenile and domestic relations court, or circuit court. Existing data sources do not contain sufficient detail to identify additional offenders convicted of misdemeanor assault and battery under § 18.2-57 where the victim was a family or household member. A misdemeanor conviction for stalking in violation of 18.2-60.3 was the primary offense in 230 cases, while 393 additional offenders were convicted of misdemeanor sexual battery under § 18.2-67.4 during this two-year period. However, data are not sufficiently detailed to determine if any of these convictions involved a family or household member.

Existing data sources do not contain sufficient detail to estimate the number of cases that would be affected by the proposal. However, affected offenders may be sentenced similarly to those who are currently convicted of a felony under the existing provisions. According to the Circuit Court Case Management System (CMS) for FY2013 and FY2014, two individuals were convicted under § 18.2-308.2:2(M) for purchasing a firearm with the intent to provide it to a person who is ineligible to receive it from a firearms dealer (as the primary, or most serious, offense). While one of these offenders received a local-responsible (jail) term of two months, the other offender was sentenced to a state-responsible (prison) term of seven years. For offenses committed on or after July 1, 2013, the General Assembly established a mandatory minimum prison term of at least one year for violations of § 18.2-308.2:2(M), depending on the circumstances of the case.

Offenders convicted of the proposed Class 1 misdemeanor who accumulate three or more firearm convictions could be found guilty of a Class 6 felony under § 18.2-311.2. A review of FY2009-FY2014 Circuit Court CMS data for all felony convictions under § 18.2-311.2 resulting from a third or subsequent misdemeanor firearms violation revealed that, during the six-year period, none of the offenders received a state-responsible (prison) sentence.

Impact of Proposed Legislation:

State adult correctional facilities. Offenders convicted of the proposed Class 1 misdemeanor offense under § 18.2-308.2(E) could, in the future, be convicted of a Class 6 felony under § 18.2-311.2 if they accumulate three or more misdemeanor firearm convictions. In the six most recent fiscal years, however, no offender convicted of a felony under § 18.2-311.2 has received a state-responsible (prison) sentence. Therefore, this portion of the proposal is not expected to have an impact on the state-responsible (prison) bed space needs of the Commonwealth during the six-year window specified by § 30-19.1:4 for legislative impact statements.

However, by making additional individuals ineligible to receive a firearm from a licensed dealer, the proposal may increase convictions under § 18.2-308.2(M) and (N). As a result, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing data sources do not provide sufficient detail to estimate the number of new felony convictions that would 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 Class 1 misdemeanor offense and expanding certain felony offenses, the proposal may increase local-responsible (jail) bed space needs. Because the number of new convictions that may result from enactment of the proposal cannot be determined, the magnitude of the impact on jail bed space needs cannot be estimated.

Adult community corrections programs. Because the proposal could result in both misdemeanor and 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 cannot be quantified.

Virginia's sentencing guidelines. Felony violations of §§ 18.2-311.2 and 18.2-308.2:2(M) and (N) are not covered by the sentencing guidelines as the primary, or most serious, offense in a case. Such a conviction, however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines is necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional center (JCC) 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.

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 2 of the 2014 Acts of Assembly, 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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