



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 300 (Patron – Ebbin)

LD#: 16100802

Date: 1/4/2016

Topic: Carrying a loaded firearm

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 665 of the 2015 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal adds § 18.2-287.5 and amends other sections of the *Code* relating to carrying firearms in public places.

Currently, under § 18.2-308.012, it is a Class 2 misdemeanor to carry a concealed handgun onto the premises of a restaurant or club and, while there, consume alcohol. It is a Class 1 misdemeanor for any person with a permit to carry a concealed handgun to carry such handgun in a public place while under the influence of alcohol or illegal drugs.

Under the proposal, § 18.2-308.012 is repealed and replaced by § 18.2-287.5. As proposed, it would be a Class 2 misdemeanor to carry any type of loaded firearm on or about the person onto the premises of a restaurant or club and then consume alcohol. It would be a Class 1 misdemeanor for any person to carry any loaded firearm in a public place if one is under the influence of alcohol or illegal drugs. Thus, the proposal applies to any loaded firearm (not just a concealed handgun, as under current law). In addition, the proposed Class 1 misdemeanor applies to any person (not just persons with concealed handgun permits, as specified in current law). Pursuant to § 18.2-311.2, a third or subsequent misdemeanor weapon conviction (defined in Article 4, 5, 6, or 7 of Chapter 7 of Title 18.2) is a Class 6 felony.

The proposal also modifies § 18.2-308, which defines offenses related to carrying concealed weapons, as well as exceptions to those provisions. The proposal replaces the reference to § 18.2-308.012 with the proposed § 18.2-287.5. In effect, this specifies that the exceptions shall not include anyone carrying a loaded firearm in a public place while under the influence.

Finally, the proposal amends § 18.2-308.09 to disqualify an individual convicted under the proposed § 18.2-287.5 from obtaining a concealed handgun permit for five years. Currently, in § 18.2-308.012(A), concealed handgun permit holders convicted of carrying a concealed handgun while under the influence must have their permits revoked and are not eligible to re-apply for a permit for five years. Pursuant to § 18.2-308, unlawfully carrying a concealed weapon is a Class 1 misdemeanor; the penalty is elevated to a Class 6 felony for a second violation and a Class 5 felony for a third or subsequent violation.

Aspects of the proposal may overlap with several crimes defined in current *Code*. For example, under § 18.2-287.4, it is currently a Class 1 misdemeanor to carry certain loaded firearms in public places in enumerated jurisdictions. Under § 18.2-282, brandishing or pointing a firearm in a public place is a Class 1 misdemeanor or, if committed within 1,000 feet of a school, a Class 6 felony.

Analysis:

According to Circuit Court Case Management System (CMS) data for fiscal year (FY) 2014 and FY2015, 309 offenders were convicted of a felony for carrying a concealed weapon under § 18.2-308. This offense was the primary, or most serious, offense in 57 cases. Of these, 14% received a state-responsible (prison) term with a median sentence of 1.5 years. An additional 38.8% received a local-responsible (jail) term, for which the median sentence was five months. The remaining 47.4% did not receive an active term of incarceration to serve after sentencing.

An analysis of General District Court CMS data for FY2014 and FY2015 reveals that 1,972 offenders were convicted of a Class 1 misdemeanor under § 18.2-308 for unlawfully carrying a concealed weapon. The majority (65%) of the offenders did not receive an active term of incarceration to serve after sentencing. The remaining 35% received a local-responsible (jail) term, with a median sentence of one month.

Offenders convicted of the proposed Class 1 misdemeanor under § 18.2-287.5 who accumulate three or more weapon convictions could be found guilty of a Class 6 felony under § 18.2-311.2. A review of FY2010-FY2015 Circuit Court CMS data for all felony convictions resulting from a third or subsequent misdemeanor weapons 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. To the extent that the proposal expands the applicability of existing felony offenses defined in § 18.2-308, 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 may result from enactment of the proposal. Therefore, the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal may also 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. Should the proposal result in 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 § 18.2-308 are not covered by the sentencing guidelines when this offense is 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, the impact of the proposal on juvenile correctional center 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 665 of the 2015 Acts of Assembly 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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