



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1778

(Patron – Plum)

LD#: 17102510

Date: 1/10/2017

Topic: Purchase and transport of firearms

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Direct Care:**
None (\$0) *
- **Juvenile Detention Facilities:**
None (\$0) *

* Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposal adds § 18.2-308.1:6 to the *Code of Virginia* to prohibit the purchase or transportation of handguns by individuals convicted of misdemeanor assault hate crimes. With few exceptions, this ineligibility would be removed after five years from the date of conviction. Since no punishment is prescribed, a violation of the proposed section would be punishable as a Class 1 misdemeanor (§ 18.2-12). Pursuant to § 18.2-311.2, a third or subsequent Class 1 misdemeanor weapon violation (defined in Article 4, 5, 6, or 7 of Chapter 7 of Title 18.2) is punishable as a Class 6 felony.

The proposal also modifies § 18.2-308.2:3(A) to prohibit firearms dealers from employing individuals who are prohibited from purchasing or transporting a firearm due to a misdemeanor assault hate crime. Currently, pursuant to § 18.2-308.2:3(J), any dealer who willfully and knowingly employs or permits a person to act as a firearm seller in violation of this section is guilty of a Class 1 misdemeanor. Making a materially false statement on the personal descriptive information required in § 18.2-308.2:3 is a Class 5 felony.

Under § 18.2-308.2:2 (L), it is a Class 6 felony for any firearms dealer to willfully and intentionally sell, rent, trade, or transfer a firearm in violation of this section. 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 for any person ineligible to purchase or possess a firearm 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:

According to General District Court Case Management System (CMS) data for fiscal year (FY) 2011 through FY2016, a misdemeanor hate-crime assault (under the existing § 18.2-57(A)) was the primary, or most serious, offense at sentencing for 29 offenders during the six-year period.

Under the proposal, individuals convicted of a hate crime under § 18.2-57(A) would be ineligible to purchase or transport a firearm and could not be employed by a firearms dealer. Available data do not contain sufficient detail to determine the number of violations that would result if the proposal is enacted. However, affected offenders may be sentenced similarly to those who are currently convicted under existing provisions (see table below).

Offenders Convicted of Select Felony Firearm Offenses, FY2015-FY2016

Primary Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
Purchase firearm to provide to ineligible person (§ 18.2-308.2:2(M,i))	2	50%	0%	N/A	50%	1 year
Transport firearm out of state to provide to ineligible person (§ 18.2-308.2:2(M,ii))	0	N/A	N/A	N/A	N/A	N/A
Solicit violation of § 18.2-308.2:2(M) (§ 18.2-308.2:2(N))	0	N/A	N/A	N/A	N/A	N/A
False statement on required personal descriptive information (§ 18.2-308.2:3(J))	0	N/A	N/A	N/A	N/A	N/A
Third conviction of firearm/weapon offense (§ 18.2-311.2)	2	100%	N/A	N/A	N/A	N/A

Note: The analysis is based on cases in which the specified offense was the primary, or most serious, offense in the sentencing event.

Source: Supreme Court of Virginia - Circuit Court Case Management System (CMS), FY2015-FY2016

Impact of Proposed Legislation:

State adult correctional facilities. The proposal may increase the number of individuals who are ineligible to purchase or transport a handgun. However, due to the small number of affected offenders, the limited number of affected statutes, the very small amount of convictions under existing provisions, and the fact that no offender convicted of a felony under § 18.2-311.2 in the six most recent fiscal years received a state-responsible (prison) sentence, the proposal is unlikely to increase the state-responsible bed space needs of the Commonwealth during the six-year window specified by § 30-19.1:4 for legislative impact statements.

Local adult correctional facilities. By establishing a Class 1 misdemeanor, the proposal may impact local-responsible (jail) bed space needs. However, the magnitude of the impact cannot be quantified.

Adult community corrections resources. The impact on state community corrections resources and local community-based probation services cannot be estimated.

Virginia's sentencing guidelines. Felony convictions under the affected statutes are not covered by the sentencing guidelines when these offenses are the primary, or most serious, offense in a case. However, such a conviction may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice (DJJ), the proposal will not increase direct care (juvenile correctional center or alternative commitment placement) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

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

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