



## Fiscal Impact Statement for Proposed Legislation

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### Virginia Criminal Sentencing Commission

#### House Bill No. 405 (Patron – Levine)

LD#: 18103344

Date: 12/18/2017

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 836 of the 2017 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

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#### Summary of Proposed Legislation:

The proposal adds § 18.2-308.1:6 to the *Code of Virginia*, relating to the possession or transportation of firearms by persons convicted of certain offenses. Under the proposal, any person who knowingly and intentionally possesses or transports a firearm following a misdemeanor conviction for assault and battery of a family or household member or a misdemeanor conviction for sexual battery (§ 18.2-67.4) against a family member, on or after July 1, 2018, would be guilty of a Class 1 misdemeanor.

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.

The proposal also expands the applicability of several existing felony offenses to include offenders prohibited from possessing or transporting a firearm under § 18.2-308.1:6. Under the proposed modifications to § 18.2-308.2:1, for instance, individuals who sell, barter, give, or furnish a firearm to a person who is prohibited from possessing a firearm under § 18.2-308.1:6 would be guilty of a Class 4 felony. Also, 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 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.

Under § 18.2-308.2:2(K), making a materially false statement on a consent form that is required to purchase a firearm from a licensed dealer is a Class 5 felony. The proposal would amend the Virginia consent form to add a question regarding prior convictions for offenses listed in § 18.2-308.1:6. While potential buyers are not currently required to answer such questions on the Virginia consent form (SP-65), potential buyers must respond to a similar question on the federal consent form (ATF-4473). Specifically, the federal consent form asks potential purchasers if they have ever been convicted of a misdemeanor crime of domestic violence. However, the definition of this term is narrower than the list of offenses in the proposed § 18.2-308.1:6, in some respects. For instance, under federal law, the definition of a misdemeanor crime of domestic violence includes the use or attempted use of physical force or the threatened use of a deadly weapon. In contrast, the common law definition of battery (upon which Virginia's assault and battery against a family or household member is based) does not require physical force, beyond mere offensive touching, as an element of the crime (*United States v. White*, 2010).

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### Analysis:

According to the Case Management Systems (CMS) for General District Court, Circuit Court, and the Juvenile and Domestic Relations Court for fiscal year (FY) 2016 and FY2017, a total of 11,462 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. These offenders would be subject to the proposed provisions of § 18.2-308.1:6. Existing data sources do not contain sufficient detail to identify offenders convicted of misdemeanor assault and battery under § 18.2-57 where the victim was a family or household member. Also, 480 additional offenders were convicted of misdemeanor sexual battery under § 18.2-67.4 during this two-year period. However, the relationship between the victim and the offender in these cases is unknown.

Existing data sources do not contain sufficient detail to estimate how many felony convictions would result from the proposal. However, affected offenders may be sentenced similarly to those who are currently convicted of a felony under the existing provisions (see table below). 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 fiscal year (FY) 2012 through FY2017 Circuit Court Case Management System (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.

### Offenders Convicted of Select Felony Firearm Offenses, FY2016-FY2017

Primary Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
Sell, give, etc., firearm to ineligible person (§ 18.2-308.2:1)	7	57.1%	14.3%	12 months	28.6%	2.3 years
False statement on firearm consent form (§ 18.2-308.2:2(K))	188	77.7%	14.4%	7 months	8.0%	2.0 years
Dealer sell/transfer firearm in violation of section (§ 18.2-308.2:2(L))	0	N/A	N/A	N/A	N/A	N/A

Solicit, etc., dealer to transfer firearm to another (§ 18.2-308.2:2(L1))	0	N/A	N/A	N/A	N/A	N/A
Provide > 1 firearm to ineligible person (§ 18.2-308.2:2(M))	0	N/A	N/A	N/A	N/A	N/A
Purchase firearm to provide to ineligible person (§ 18.2-308.2:2(M,i))	0	N/A	N/A	N/A	N/A	N/A
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))	2	0%	0%	N/A	100%	3.5 years
False statement on affidavit (§ 18.2-308.2:3(C,1))	0	N/A	N/A	N/A	N/A	N/A
False statement on required personal descriptive information (§ 18.2-308.2:3(J))	1	100%	0%	N/A	0%	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.

Sources: Supreme Court of Virginia - Circuit Court Case Management System (CMS), FY2016-FY2017 and Virginia Criminal Sentencing Commission - Sentencing Guidelines Database, FY2016-FY2017

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### Impact of Proposed Legislation:

**State adult correctional facilities.** Offenders convicted of the proposed Class 1 misdemeanor offense under § 18.2-308.1:6 could, in the future, be convicted of a Class 6 felony under § 18.2-311.2 if they accumulate three or more 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 expanding the applicability of other existing felony offenses, 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 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 § 18.2-308.2:2(K) are covered by the sentencing guidelines. Felony convictions under the other affected sections of the *Code* are not covered by the sentencing guidelines as the primary, or most serious, offense. 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 direct care (juvenile correctional center or alternative commitment placement) 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.

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**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 836 of the 2017 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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