



## Fiscal Impact Statement for Proposed Legislation

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### Virginia Criminal Sentencing Commission

### House Bill No. 720 (Patron – Plum)

LD#: 18102335

Date: 12/14/2017

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 Correctional Centers:**  
Cannot be determined \*
- **Juvenile Detention Facilities:**  
Cannot be determined \*

\* Provided by the Department of Juvenile Justice

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#### 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. The prohibition will be removed five years after the date of conviction if the individual has not been convicted of any such offense within that period. 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) 2012 through FY2017, a misdemeanor hate-crime assault (under the existing § 18.2-57(A)) was the primary, or most serious, offense at sentencing for 26 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 who are convicted of a felony may be sentenced similarly to those who are currently convicted of a felony under 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**

<b>Primary Offense</b>	<b>Total Number of Cases</b>	<b>Percent Sentenced to Probation</b>	<b>Percent Sentenced to Jail</b>	<b>Median Jail Sentence</b>	<b>Percent Sentenced to Prison</b>	<b>Median Prison Sentence</b>
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 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

**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 number of convictions under existing provisions, and the fact that no offender convicted of a felony under § 18.2-311.2 during 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 new 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, 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 is \$0 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

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