



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 4024

(Patron – Yancey)

LD#: 19200156

Date: 7/9/2019

Topic: Possession of firearms by certain individuals

#### Fiscal Impact Summary:

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

- **Juvenile Direct Care:**  
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 854 of the 2019 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

#### Summary of Proposed Legislation:

The proposal amends several sections of the *Code* and adds others to prohibit certain persons from purchasing, possessing or transporting a firearm. Under the proposal, private treatment providers, community services boards, and behavioral health authorities must report patient admissions for schizophrenia and bipolar 1 disorder to the Central Criminal Records Exchange and advise the patient prior to voluntary admission that such admission will prohibit his ability to purchase, possess, or transport a firearm. Pursuant to the proposed § 18.2-308.1:3.1, it would be a Class 1 misdemeanor for a person who has been voluntarily admitted to an inpatient treatment facility for treatment of schizophrenia or bipolar 1 disorder to purchase, possess, or transport a firearm. The bill provides a means by which such person may petition the court to have his right to purchase, possess, or transport a firearm restored. The proposal also specifies that such persons are disqualified from obtaining a concealed handgun permit; if the person already possesses such a permit, it must be surrendered. Current provisions of the *Code* cover persons involuntarily admitted to a facility for mental health treatment or ordered to mandatory outpatient mental health treatment (§ 18.2-308.1:3).

The proposal also expands the applicability of several existing felony offenses to include individuals who would be prohibited by the proposed § 18.2-308.1:3.1 from purchasing, possessing or transporting a firearm. 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. Under the proposed modifications to § 18.2-308.2:1, individuals who sell, barter, give, or furnish a firearm to a person who is prohibited from possessing a firearm under the proposed § 18.2-308.1:3.1 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. Persons 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 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 ask whether the applicant has ever been voluntarily admitted to an inpatient treatment facility for treatment of schizophrenia or bipolar 1 disorder. An individual making a materially false statement in response to this question would be subject to conviction for a Class 5 felony.

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### Analysis:

Existing data sources do not contain sufficient detail to estimate how many additional convictions may result from enactment of the proposal. Affected offenders may be sentenced similarly to those who are currently convicted under existing felony provisions (see table below).

Offenders convicted of a Class 1 firearm misdemeanor under the proposed § 18.2-308.1:3.1 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) 2013 through FY2018 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, FY2017-FY2018**

<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>
Sell, give, etc., firearm to ineligible person (§ 18.2-308.2:1)	10	40%	40%	6.5 months	20%	2.25 years
False statement on firearm consent form (§ 18.2-308.2:2(K))	199	80.4%	13.6%	3 months	6.0%	1.9 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))	2	50%	N/A	N/A	50%	1.0 year
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))	1	100%	N/A	N/A	N/A	N/A
Solicit violation of § 18.2-308.2:2(M) (§ 18.2-308.2:2(N))	5	20%	N/A	N/A	80%	4.3 years

Note: The analysis is based on cases in which the specified offense was the primary, or most serious, in the sentencing event.  
 Sources: Supreme Court of Virginia - Circuit Court Case Management System (CMS), FY2017-FY2018 and  
 Virginia Criminal Sentencing Commission - Sentencing Guidelines Database, FY2017-FY2018

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Offenders convicted of the proposed Class 1 misdemeanor offense under § 18.2-308.1:3.1 could, in the future, be convicted of a Class 6 felony under § 18.2-311.2 if they accumulate three or more weapon 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 existing 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 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 convictions, 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 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 cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 854 of the 2019 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.**