



## Impact Analysis on Proposed Legislation

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### *Virginia Criminal Sentencing Commission*

#### House Bill No. 1741 (Patron – Pogge)

**LD#:** 09-0536686 (Revised)

**Date:** 1/14/2009

**Topic:** Possession or transportation of certain firearms by persons under the age of 18

#### **Fiscal Impact Summary:**

- **State Adult Correctional Facilities:**  
\$1,847 (less than one bed)
- **Local Adult Correctional Facilities:**  
Negligible
- **Adult Community Corrections Programs:**  
Negligible

- **Juvenile Correctional Centers:**  
\$41,650 (less than one bed)
- **Juvenile Detention Facilities:**  
Cannot be determined

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#### **Summary of Proposed Legislation:**

The proposal amends § 18.2-308.7 to increase the penalty for possession or transportation of certain firearms by persons under the age of 18 to a Class 6 felony. Currently, this offense is a Class 1 misdemeanor; however, a third or subsequent misdemeanor weapons violation (defined in Article 4, 5, 6 or 7 of Chapter 7 of Title 18.2) is a Class 6 felony (§ 18.2-311.2).

The General Assembly has amended § 18.2-308.7 twice since 1999. In the 2003 session, the General Assembly clarified the definitions of “handgun” and “assault firearm.” The 2004 General Assembly removed language requiring that a handgun that is possessed or transported in violation of the statute be forfeited to the Commonwealth and disposed as provided in § 18.2-310 .

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#### **Analysis:**

According to fiscal year (FY) 2007 and FY2008 data from the Juvenile Tracking System (JTS), 713 juveniles were seen as intakes in court service units for misdemeanor violations of § 18.2-308.7. In FY2008, intakes for this offense resulted in petitions for 54 juveniles who, under current law, were not eligible for commitment to the state’s Department of Juvenile Justice (DJJ). Under the proposal, these juveniles would be eligible for commitment if adjudicated delinquent by the court. Data on adjudications in the Juvenile and Domestic Relations Court are not readily accessible.

A juvenile who commits a misdemeanor violation of § 18.2-308.7 will be prosecuted as an adult in General District Court if he has been tried and convicted as an adult for any previous offense. According to calendar year (CY) 2006 and CY2007 Court Automated Information System (CAIS) data, one juvenile was convicted in General District Court of a misdemeanor violation of § 18.2-308.7 and was sentenced to a local-responsible (jail) term of 30 days.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** While the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth, the size of the impact is likely to be very small. A juvenile who violates § 18.2-308.7 will be tried as an adult if he has been tried and convicted as an adult for any previous offense. By raising the penalty for this offense from a Class 1 misdemeanor to a Class 6 felony, as proposed, a juvenile tried and convicted of this crime as an adult could receive a state-responsible (prison) sentence. The proposal is expected to have a very small impact on prison beds. The impact is estimated to be less than one bed by FY2015. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$1,847.

**Local adult correctional facilities.** While the proposal may increase local-responsible (jail) bed space needs, the size of the impact is expected to be negligible.

**Adult community corrections programs.** Raising a crime from a Class 1 misdemeanor to a Class 6 felony may decrease the demand for local community-based probation services and increase the need for state community corrections resources. The *Code of Virginia*, however, allows judges to utilize local community-based probation programs for Class 5 and Class 6 felons as well as misdemeanants. Data are not available to estimate the impact on local or state community corrections resources that may result from the proposal, but any impact is likely to be negligible.

**Virginia's sentencing guidelines.** Convictions under § 18.2-308.7 are not covered by the sentencing guidelines as the primary (most serious) offense in a case; however, a conviction for this offense may augment the guidelines recommendation if a covered offense is the most serious at sentencing. No adjustment to the guidelines would be necessary under the proposal.

**Juvenile correctional centers.** By increasing the penalty for certain acts from a misdemeanor to a felony, the proposal could result in additional commitments to the Department of Juvenile Justice (DJJ). Existing *Code* specifies that a juvenile is eligible for commitment if he is adjudicated for a felony, has a prior felony adjudication, or has accumulated a total of four Class 1 misdemeanor adjudications. If a juvenile were committed to DJJ for the proposed felony offense, the minimum confinement assigned under the Department's Length of Stay (LOS) guidelines would be 6 to 12 months. According to DJJ, the impact on juvenile correctional center (JCC) beds is estimated to be less than one bed by FY2015. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$41,650.

**Juvenile detention facilities.** According to the Department of Juvenile Justice, the impact of the proposal 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 \$1,847 for periods of imprisonment in state adult correctional facilities and is \$41,650 for periods of commitment to the custody of the Department of Juvenile Justice.**

**Assumptions underlying the analysis include:**

**General Assumptions**

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety's Committee on Inmate Forecasting in 2008.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety's Committee on Inmate Forecasting and approved in July 2008.
3. Cost per prison bed was assumed to be \$27,294 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*
4. Cost per jail bed was based on The Compensation Board's FY2007 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.77 per day or \$10,509 per year. The local cost was calculated by using the daily expenditure cost of \$62.56 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$29.71 per day or \$10,853 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

**Assumptions relating to prison and jail sentence lengths**

1. The impact of the proposed legislation, which would be effective on July 1, 2009, is phased in to account for case processing time.
2. To gauge the impact on sentencing, it was assumed that the distribution of sentences for the affected cases will be similar to the distribution of sentences under the existing provision for Class 6 weapon offenses that were neither violent under § 17.1-805 nor requiring a mandatory minimum term of imprisonment.
3. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2007. For weapon offenses, this rate was 11.98%.

**Assumptions relating to juvenile sentences**

1. In FY2008, of the 76 juveniles charged with § 18.2-308.7 with no accompanying felony, one (1.3%) were detained. This was the proportion assumed to be committed to DJJ under the proposal.
2. Juveniles committed to DJJ for a Class 6 felony have a baseline length of stay (LOS) recommendation of 6 to 12 months. On average, these offenders served 237.9 days.

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