



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1410

(Patron – Scott, J.)

LD#: 13102112

Date: 12/13/2012

Topic: Possession of a firearm, etc., by person convicted of certain offenses

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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal adds § 18.2-308.1:6, relating to the possession or transportation of firearms, ammunition, stun weapons, explosives or concealed weapons by persons convicted of certain offenses, to the *Code of Virginia*. Specifically, the proposal provides that it is a Class 6 felony for an individual to knowingly and intentionally possess or transport a firearm or knowingly and intentionally possess, transport, or carry any weapon described in § 18.2-308(A) on or about his person within a five-year period following a conviction for stalking under § 18.2-60.3, sexual battery under § 18.2-67.4, or assault and battery of a family or household member that resulted in serious bodily injury. The proposed § 18.2-308.1:6(B) allows an individual prohibited from possessing a weapon under the proposal to petition the circuit court for a permit to possess or carry a firearm. Offenders who have been granted a permit would also be exempt from the Class 6 felony.

Currently, under § 18.2-308(A), it is a Class 1 misdemeanor to carry concealed firearms, certain knives, flailing instruments, throwing stars, or any like weapons. A second violation under this section is a Class 6 felony and a third or subsequent violation is a Class 5 felony, punishable by up to ten years imprisonment. Section 18.2-308.2 prohibits the possession or transportation of firearms, firearm ammunition, stun weapons, explosives, and concealed weapons, as defined in § 18.2-308(A), by convicted felons. A violation of this section is a Class 6 felony. Possession of a firearm carries a 5-year mandatory penalty if the offender has been convicted of a violent felony, as defined in § 17.1-805, or a 2-year mandatory minimum sentence if the offender has been convicted of a nonviolent felony within the previous 10 years.

Analysis:

According to the fiscal year (FY) 2011 and FY2012 Local Inmate Data System (LIDS), there were 5,658 offenders held pre- or post-trial in jail who were convicted of a Class 1 misdemeanor under § 18.2-57.2

for assaulting a family or household member. LIDS data do not capture individuals who were never booked into a local or regional jail.

The General District Court Automated Information System (CAIS) for fiscal year (FY) 2011 and FY2012 indicates that 223 offenders were convicted of a misdemeanor for stalking in violation of § 18.2-60.3. Half of the offenders (51.1%) were sentenced to a local-responsible (jail) term, for which the median sentence was approximately two months. The remaining offenders did not receive an active term of incarceration to serve after sentencing.

According to the same General District Court data, 213 offenders were convicted of misdemeanor sexual battery under § 18.2-67.4 during this two-year period. The majority of these offenders (70%) received a local-responsible (jail) term with a median sentence of three months, while 30% of the offenders were not given an active term of incarceration to serve after sentencing.

Existing databases do not contain sufficient detail to identify the number of offenders convicted of a misdemeanor violation of § 18.2-57.2 resulting in serious physical injury, § 18.2-60.3, or § 18.2-67.4 who subsequently carry a firearm, etc., and would be in violation of the proposed provision.

Impact of Proposed Legislation:

State adult correctional facilities. Currently, felons who possess a firearm can be convicted of a Class 6 felony under § 18.2-308.2. Under the proposal, offenders who have not been convicted of a felony but have been convicted of one of the specified misdemeanors (and who are not granted a permit) would be prohibited from possessing a firearm for five years; violation would be punishable as a Class 6 felony. By creating a new felony offense, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, the databases available to the Commission do not contain sufficient detail to estimate the number of offenders that may be affected by the proposal. Therefore, the magnitude of the impact cannot be quantified.

Local adult correctional facilities. Similarly, the proposal may increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in additional felony convictions and subsequent supervision requirements for some offenders, the proposal may increase the need for adult community corrections resources. The potential impact on community corrections programs, however, cannot be determined.

Virginia's sentencing guidelines. Because the proposal defines a new felony offense, convictions under the proposed § 18.2-308.1:6 would not be 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. The Department of Juvenile Justice reports that, while this proposal could cause an increase in commitments, the impact of this proposal on bed space needs for juvenile correctional centers cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that this proposal's impact on detention center bed space needs cannot be determined.

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 3 of the Acts of Assembly of 2012, Special Session I, 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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