



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 510

#### *Amendment in the Nature of a Substitute (Patron Prior to Substitute – Favola)*

**LD#:** 14104062

**Date:** 1/27/2014

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

#### 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

#### 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 would be a Class 1 misdemeanor for any 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) 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. Individuals who possess a stun weapon in their residence or the curtilage thereof would be exempt from the provisions of § 18.2-308.1:6.

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.

The proposal defines a new Class 1 misdemeanor in the *Code*. 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.

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**Analysis:**

The proposal would apply to offenders convicted of a misdemeanor for assaulting a family or household member, stalking, or sexual battery. According to the most recent data from the Local Inmate Data System (LIDS) for fiscal year (FY) 2011 and FY2012, 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. In addition, the General District Court Case Management System (CMS) for FY2012 and FY2013 indicates that 171 offenders were convicted of a misdemeanor for stalking in violation of § 18.2-60.3. According to the same General District Court data, 158 offenders were convicted of misdemeanor sexual battery under § 18.2-67.4 during this two-year period.

Existing databases do not contain sufficient detail to identify the number of offenders convicted of one of the above misdemeanors who subsequently carry a firearm, etc., and would be in violation of the proposed provision.

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. According to the Circuit Court Case Management System for FY2009 through FY2013, eight offenders were convicted of a felony under § 18.2-311.2 for a third or subsequent firearm offense. The felony firearm charge was the primary, or most serious, offense in four of the cases. While two of these offenders were given a local-responsible (jail) term, for which the median sentence was 1.7 months, the remaining two offenders did not receive an active term of incarceration to serve after sentencing.

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**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 would be prohibited from possessing a firearm for five years; violations would be punishable as Class 1 misdemeanors. 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 five most recent fiscal years, however, no offender convicted of a felony under § 18.2-311.2 received a state-responsible (prison) sentence. Therefore, 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.

**Local adult correctional facilities.** By creating a new Class 1 misdemeanor offense, the proposal may increase local-responsible (jail) bed space needs. Because the number of new convictions resulting from the proposal cannot be determined, the magnitude of the impact on jail beds cannot be estimated.

**Adult community corrections programs.** The proposal could result in convictions and subsequent supervision requirements for an additional number of offenders and this may increase the need for local and/or state community corrections resources. The number of new convictions likely to result from the proposal cannot be determined; therefore, the potential impact on community corrections resources cannot be quantified.

**Virginia's sentencing guidelines.** Felony convictions under § 18.2-311.2 are not covered by the sentencing guidelines as the primary offense. A conviction under this provision, however, could 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 correctional centers.** According to the Department of Juvenile Justice, the proposal is not expected to increase juvenile correctional center bed space needs.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

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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 \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

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