



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 742 (Patron – Spruill)

LD#: 18104581

Date: 1/9/2018

Topic: Possession or transfer of certain firearms and firearm magazines

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 836 of the 2017 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 a new section relating to the possession or transfer of certain firearms and firearm magazines. The proposed § 18.2-309.1 would make it a Class 6 felony to import, sell, barter, or transfer any firearm magazine designed to hold more than 10 rounds of ammunition. Certain exceptions are provided, such as transfer to, or possession by, law enforcement. The proposal would also:

- Modify the definition of an assault firearm under §§ 18.2-308.2:01, 18.2-308.2:2 and 18.2-308.7 from a firearm equipped with a magazine that will hold more than 20 rounds to a firearm equipped with a magazine that will hold more than 10 rounds;
- Make it unlawful under § 18.2-308.2:01 (with limited exceptions) for any person to knowingly and intentionally possess or transport an assault firearm or carry an assault firearm about his person, hidden from common observation (currently, this restriction applies only to persons who are not citizens of the United States and are not lawfully admitted for permanent residence);
- Prohibit a dealer from selling, renting, trading or transferring any assault firearm under § 18.2-308.2:2 (currently, this restriction applies only to persons who are not citizens of the United States and are not lawfully admitted for permanent residence);
- Prohibit the import, sale, possession or transfer under § 18.2-308.8 of any specified semi-automatic folding stock shotguns capable of holding more than 10 shotgun shells (currently, shotguns of this type are prohibited if they hold more than 12 shells);
- Prohibit the carrying of certain semi-automatic firearms, whether loaded or unloaded, in public areas in all Virginia localities, reduce the size of the magazine (from 20 rounds to 10) that qualify the

firearm for this prohibition, and increase the penalty for unlawfully carrying a semi-automatic firearm from a Class 1 misdemeanor to a Class 6 felony (§ 18.2-287.4); and

- Increase the penalty for the possession of a handgun or assault firearm by a minor from a Class 1 misdemeanor to a Class 6 felony (§ 18.2-308.7).

Currently, under § 18.2-308.2:01(A), it is a Class 6 felony for any person who is not a citizen of the United States and is not lawfully admitted for permanent residence to knowingly and intentionally possess or transport any assault firearm or to carry an assault firearm in a concealed manner. Under § 18.2-308.2:2(L), a firearms dealer who willfully and intentionally sells or transfers a firearm in violation of that section is guilty of a Class 6 felony. It is also a Class 6 felony under § 18.2-308.8 to import, possess, or transfer specified semi-automatic folding stock shotguns capable of holding more than 12 shells.

Per § 18.2-287.4, it is a Class 1 misdemeanor for a person to carry a loaded semi-automatic firearm with specified features and equipped with a magazine that holds more than 20 rounds or a shotgun with a magazine that will hold more than seven rounds in public areas in the cities of Alexandria, Chesapeake, Fairfax, Falls Church, Newport News, Norfolk, Richmond, or Virginia Beach or in the Counties of Arlington, Fairfax, Henrico, Loudoun, or Prince William. 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.

Analysis:

Existing databases do not provide sufficient detail to identify the number of new convictions likely to result from enactment of the proposal. Information pertaining to offenders convicted under existing provisions can be found in the table below. The number of minors adjudicated delinquent in Juvenile and Domestic Relations Court for possessing a handgun or assault firearm is not known.

Offenders Convicted of Select Felony Firearm Offenses, FY2012-FY2017

Primary Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
Carry loaded firearm with specified features in certain localities (§ 18.2-287.4)	28	57.1%	42.9%	1.7 mos.	N/A	N/A
Third or subsequent misdemeanor weapons violation (§ 18.2-311.2)	4	100.0%	N/A	N/A	N/A	N/A
Possession/transport of assault firearm by person not a citizen and not admitted for permanent residence (§ 18.2-308.2:01(A))	0	N/A	N/A	N/A	N/A	N/A
Possession/transport of firearm by person not lawfully present (§ 18.2-308.2:01(B))	17	35.3%	29.4%	5.0 mos.	35.3%	1.5 yrs.
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
Import, sell, possess or transfer restricted Striker 12 or like semi-automatic shotgun (§ 18.2-308.8)	0	N/A	N/A	N/A	N/A	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), FY2012-FY2017 and
Supreme Court of Virginia – General District Court Case Management System (CMS), FY2012-FY2017

Impact of Proposed Legislation:

State adult correctional facilities. The proposal expands the applicability of existing felony offenses and raises the penalty for two Class 1 misdemeanors to Class 6 felonies. The proposal may increase the number of felony convictions under these provisions and, thus, may increase future state-responsible (prison) bed space needs. However, existing databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal. Therefore, the magnitude of the impact on prison beds cannot be quantified.

Local adult correctional facilities. By expanding the applicability of existing felony and misdemeanor offenses and increasing certain penalties, 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. Because the proposal could result in felony 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 resources cannot be quantified.

Virginia's sentencing guidelines. Convictions under the affected statutes are not covered by the sentencing guidelines as the primary, or most serious, offense in a case. A conviction under one of these provisions, 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 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.

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 836 of the 2017 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.