



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 900

(Patron – Levine)

LD#: 20104904

Date: 1/6/2020

Topic: Possession of firearms following certain convictions

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 **

** 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 adds § 18.2-308.1:6 to the *Code of Virginia*, relating to the possession or transportation of firearms by persons convicted of certain offenses. Under the proposal, any person who knowingly and intentionally possesses or transports a firearm following a misdemeanor conviction for stalking, sexual battery, assault and battery of a family or household member, or unlawfully brandishing a firearm, committed on or after July 1, 2020, would be guilty of a Class 1 misdemeanor. In addition, any person who knowingly and intentionally possesses or transports a firearm following two or more misdemeanor convictions for any assault and battery in violation of § 18.2-57 would be guilty of a Class 1 misdemeanor.

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.

The proposal expands the applicability of several existing felony offenses to include offenders prohibited from purchasing, possessing or transporting a firearm under § 18.2-308.1:6. Under the proposed modifications to § 18.2-308.2:1, for instance, individuals who sell, barter, give, or furnish a firearm to a person who is prohibited from possessing a firearm under § 18.2-308.1:6 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. Offenders 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 term 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 add a question regarding prior convictions for offenses listed in § 18.2-308.1:6. While potential buyers are not currently required to answer such questions on the Virginia consent form (SP-65), potential buyers must respond to one similar question on the federal consent form (ATF-4473). Specifically, the federal consent form asks potential purchasers if they have ever been convicted of a misdemeanor crime of domestic violence.

Analysis:

During FY2018 and FY2019, a total of 11,046 offenders were convicted of a Class 1 misdemeanor under § 18.2-57.2 for assaulting a family or household member (as the primary, or most serious, offense) in General District Court, Juvenile and Domestic Relations Court, or Circuit Court. These offenders would be subject to the proposed provisions of § 18.2-308.1:6. During the same two-year period, another 442 offenders were convicted of misdemeanor sexual battery under § 18.2-67.4, 291 were convicted of stalking under § 18.2-60.3, and 1,037 were convicted of brandishing a firearm under § 18.2-282 in General District Court, Juvenile and Domestic Relations Court, or Circuit Court (the misdemeanor was the most serious offense in each case). The identified offenders would also be subject to the proposed restrictions. Finally, at least 530 offenders convicted of assault and battery during the two-year period had at least one other conviction for assault and battery and, thus, would have been subject to the proposed restrictions had they been in effect at that time.

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. A review of fiscal year (FY) 2014 through FY2019 Circuit Court Case Management System (CMS) data for all felony convictions under § 18.2-311.2 revealed that, during the six-year period, four offenders were convicted of such a felony. The felony violation of § 18.2-311.2 was the primary, or most serious, offense in three of the cases. However, none of these offenders received a state-responsible (prison) sentence.

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

Offenders Convicted of Select Felony Firearm Offenses, FY2018-FY2019

Primary Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
Sell, give, etc., firearm to ineligible person (§ 18.2-308.2:1)	8	62.5%	37.5%	6 months	0%	N/A
False statement on firearm consent form (§ 18.2-308.2:2(K))	224	79%	16.1%	6 months	4.9%	1.6 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%	0%	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

Offenders Convicted of Select Felony Firearm Offenses, FY2018-FY2019 (continued)

Primary Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
Purchase firearm to provide to ineligible person (§ 18.2-308.2:2(M,i))	3	100%	0%	N/A	0%	N/A
Transport firearm out of state to provide to ineligible person (§ 18.2-308.2:2(M,ii))	0	N/A	N/A	N/A	N/A	N/A
Solicit violation of § 18.2-308.2:2(M) (§ 18.2-308.2:2(N))	3	33.3%	0%	N/A	66.7%	6.8 years
False statement on affidavit (§ 18.2-308.2:3(C,1))	0	N/A	N/A	N/A	N/A	N/A
False statement on required personal descriptive information (§ 18.2-308.2:3(J))	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), FY2018-FY2019 and Virginia Criminal Sentencing Commission - Sentencing Guidelines Database, FY2018-FY2019

Impact of Proposed Legislation:

State adult correctional facilities. 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 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 certain 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 both misdemeanor and 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 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 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. 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 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.

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