



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 961

(Patron – Levine)

LD#: 20104855

Date: 1/6/2020

Topic: Possession, etc., of certain firearms and related devices

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 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 amends numerous sections of the *Code* and adds §§ 18.2-308.9 through 18.2-308.13 relating to certain firearms and firearm devices. The proposal amends § 18.2-308.8 to expand the definition of “assault firearm” and prohibit any person from importing, selling, transferring, manufacturing, purchasing, possessing, or transporting an assault firearm or certain parts thereof. A violation would be a Class 6 felony. Certain exceptions are provided, such as transfer to, or possession by, members of the Armed Forces acting within the scope of official duties.

The proposal would also:

- Prohibit a dealer from selling, renting, trading or transferring any assault firearm under § 18.2-308.2:2 (currently, this restriction applies only to potential buyers who are not citizens of the United States and are not lawfully admitted for permanent residence);
- Prohibit the carrying of a loaded shotgun with a magazine holding more than seven rounds in public areas throughout Virginia, not just in specified localities (§ 18.2-287.4) and possession of such shotguns by persons under the age of 18 except under certain circumstances (§ 18.2-308.7); and
- Make it a Class 6 felony to import, sell, transfer, manufacture, purchase, possess or transport any large-capacity magazine, silencer, or trigger activator, as defined in the bill (proposed § 18.2-308.9, § 18.2-308.10, and § 18.2-308.11).
- Allow current owners of assault firearms, large-capacity magazines, silencers, or trigger activators until January 1, 2021, to (i) render the firearm or device inoperable; (ii) remove the firearm or device from the Commonwealth; (iii) transfer the firearm or device to a person outside the Commonwealth who is not prohibited from possessing it; or (iv) surrender the firearm or device to a state or local law-enforcement agency.

- Further specifies that any person who legally owns an assault firearm on July 1, 2020, may retain possession of such assault firearm after January 1, 2021, if such person has obtained a permit to possess an assault firearm from the Department of State Police.

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.

Offenders Convicted of Select Firearm Offenses, FY2014-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
Carry loaded firearm with specified features in certain localities (§ 18.2-287.4) ¹	66	71.2%	28.8%	4 mos.	N/A	N/A
Third or subsequent misdemeanor weapons violation (§ 18.2-311.2) ²	3	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)) ²	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)) ²	15	40.0%	6.7%	12 mos.	53.3%	1.6 yrs.
Dealer sell/transfer firearm in violation of section (§ 18.2-308.2:2(L)) ²	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) ²	1	100.0%	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.

¹Source: Supreme Court of Virginia - General District Court Case Management System (CMS), FY2014-FY2019

²Source: Supreme Court of Virginia - Circuit Court Case Management System (CMS), FY2014-FY2019

Impact of Proposed Legislation:

State adult correctional facilities. The proposal creates several new felonies and expands the potential applicability of existing offenses. Thus, the proposal may increase the future state-responsible (prison) beds needs of the Commonwealth. 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 state-responsible (prison) beds cannot be quantified.

Local adult correctional facilities. Similarly, 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 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 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.