



## Fiscal Impact Statement for Proposed Legislation

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### Virginia Criminal Sentencing Commission

#### Senate Bill No. 1382 (Patrons – Favola; Delegates: Hope and Kory)

LD#: 21102782

Date: 01/22/2021

Topic: Possession or transportation 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 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 1289 of the Acts of Assembly of 2020 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

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#### Summary of Proposed Legislation:

The proposal adds § 18.2-308.1:8 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 purchases, possesses or transports a firearm following a misdemeanor conviction for an assault and battery of a family or household member or a substantially similar offense under the laws of any other state or of the United States when the offense occurred on or after July 1, 2021, would be guilty of a Class 3 misdemeanor.

The proposal would expand the applicability of several existing felony offenses to include offenders prohibited from possessing or transporting a firearm under the proposed § 18.2-308.1:8. Under the proposed changes 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 § 18.2-308.1:8 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 a misdemeanor listed in § 18.2-308.1:8.

### Analysis:

Existing data sources do not contain sufficient detail to estimate how many felony convictions would result from enactment of 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, FY2019-FY2020**

<b>Primary Offense</b>	<b>Total Number of Cases</b>	<b>Percent Sentenced to Probation</b>	<b>Percent Sentenced to Jail</b>	<b>Median Jail Sentence</b>	<b>Percent Sentenced to Prison</b>	<b>Median Prison Sentence</b>
Sell, give, etc., firearm to ineligible person (§ 18.2-308.2:1)	5	80%	20%	9 months	0%	N/A
False statement on firearm consent form (§ 18.2-308.2:2(K))	220	77.7%	15.5%	5.5 months	6.8%	1.3 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))	0	N/A	N/A	N/A	N/A	N/A
Provide > 1 firearm to ineligible person (§ 18.2-308.2:2(M))	1	100%	0%	N/A	0%	N/A
Purchase firearm to provide to ineligible person (§ 18.2-308.2:2(M,i))	2	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))	0	N/A	N/A	N/A	N/A	N/A
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), FY2019-FY2020 and Virginia Criminal Sentencing Commission - Sentencing Guidelines Database, FY2019-FY2020

### **Impact of Proposed Legislation:**

**State adult correctional facilities.** By expanding the applicability of 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.<sup>1</sup>

**Local adult correctional facilities.** By expanding certain felony offenses, the proposal may increase local-responsible (jail) bed space needs. As 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 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 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.

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**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 1289 of the Acts of Assembly of 2020 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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<sup>1</sup> Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.