

REVISED (1/22/2020)
Department of Planning and Budget
2020 Fiscal Impact Statement

1. Bill Number: SB490

House of Origin	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: Favola

3. Committee: Senate Committee on the Judiciary

4. Title: Purchase, possession, or transportation of firearms following a conviction.

5. Summary: Prohibits a person who has been convicted of stalking, sexual battery, or assault and battery of a family or household member from purchasing, possessing, or transporting a firearm. A person who violates this provision is guilty of a Class 1 misdemeanor. The bill provides for a process by which a person convicted of such crime may petition the circuit court for a reinstatement of his right to possess or transport a firearm and the factors a court must consider in determining such reinstatement.

6. Budget Amendment Necessary: Yes, Item 402 (Department of Corrections).

7. Fiscal Impact Estimates: Preliminary (see Item 8 below).

8. Fiscal Implications: According to the Virginia State Police (VSP), the proposed legislation would require the agency to (1) revise and reprint the Virginia Firearms Transaction Record (form SP-65), and distribute by the United Postal Service to every firearms dealer registered with the Firearms Transaction Center; and (2) modify the electronic version of the form recently made available to registered firearms dealers. The VSP reports that the total cost for these activities is estimated to be \$14,086. The fiscal impact statement is revised to reflect funding included in the introduced budget (HB30/SB30) in Item 425 for this cost.

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. The proposal establishes that any person who knowingly and intentionally purchases, possesses or transports a firearm following a misdemeanor conviction for (i) stalking (§ 18.2-60.3), (ii) sexual battery (§ 18.2-67.4), (iii) assault and battery of a family or household member, or (iv) an offense substantially similar to clause (i), (ii), or (iii) under the laws of any other state or of the United States, when the offense occurred on or after July 1, 2020, would be guilty of a Class 1 misdemeanor.

It also includes a process for a court to restore firearm rights for affected individuals. It expands the applicability of several existing felony offenses to include offenders prohibited from possessing or transporting a firearm under the proposed § 18.2-308.1:6. 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. Individuals would also be ineligible to receive a firearm from a licensed firearms dealer. Currently, under § 18.2-308.2:2(M)(criminal history check), 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. And for offenders who transfer more than one firearm in violation of are subject to a mandatory minimum term of five years. It a Class 4 felony for any person ineligible to purchase or possess a firearm to solicit, employ, or assist another in purchasing a firearm in violation of § 18.2- 308.2:2(M); a violation of this subsection also carries a five-year mandatory minimum term.

Finally, 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 § 18.2-308.1:6. 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.

Since the proposed legislation expands the applicability of a Class 1 misdemeanor, it may result in additional persons being sent to jail. Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail. However, there is not enough information available to reliably estimate the increase in jail population as a result of this proposal. Nevertheless, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanant or otherwise local-responsible prisoner held in a jail and \$12.00 a day for each state-responsible prisoner. It also funds a considerable portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2019), the estimated total state support for local jails averaged \$34.07 per inmate, per day in FY 2018.

Additionally, offenders convicted of the proposed Class 1 misdemeanor offense under the proposed legislation could, in the future, be convicted of a Class 6 felony under current law if they accumulate three or more firearm convictions. However, the Criminal Sentencing Commission reports that in the six most recent fiscal years, no offender convicted of a felony under such circumstances 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 current law for legislative impact statements.

However, because the proposed legislation expands the applicability of other felony offenses, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, available data do not provide sufficient detail to estimate the number of new felony convictions, or potentially longer sentences, which may result from enactment of the proposal. Therefore, the impact of this portion of the proposal on prison bed space needs cannot be determined. Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact

of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 854, 2019 Acts of Assembly, requires that a minimum impact of \$50,000 be assigned to the bill.

9. Specific Agency or Political Subdivisions Affected: Department of Corrections; Virginia State Police; courts; local law enforcement; local jails.

10. Technical Amendment Necessary: No.

11. Other Comments: This bill is similar to HB900.