



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1992 **Amendment in the Nature of a Substitute** **(Patron Prior to Substitute – Murphy)**

LD#: 21200021

Date: 02/16/2021

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.

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 1 misdemeanor. The proposed section also provides the definition of “family or household member” and specifies the conditions for a person convicted of a newly established Class 1 misdemeanor to restore his right to purchase, possess, or transport a firearm.

Under the proposed changes to § 18.2-308.2:1, 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. Furthermore, any individuals convicted of the proposed Class 1 misdemeanor would be subject to § 18.2-311.2, which specifies that 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.

Analysis:

The proposal would prohibit persons with a misdemeanor conviction for assault and battery of a family or household member from purchasing, possessing or transporting a firearm. Existing Virginia and federal laws impose certain requirements on firearm dealers and prospective firearm purchasers. Adding the proposed § 18.2-308.1:8 to the *Code* is unlikely to expand the applicability of the felonies defined in § 18.2-308.2:2 regarding firearm purchases, as persons with prior convictions for assault and battery of a family or household member are already ineligible to purchase a firearm under federal law. Federal law requires a firearm dealer to obtain a completed and signed ATF Form 4473 from any person who seeks to acquire a firearm. Question 11.i on the ATF Form 4473 asks whether the applicant has ever been convicted in any court of a misdemeanor crime of domestic violence. In *Marshall v. Commonwealth* (2019), the Court of Appeals of Virginia concluded that an individual filling out the ATF Form 4473 who denies having a prior a conviction under § 18.2-57.2 involving assault and battery of a family or household member, when he in fact does have a such a conviction, may be charged and convicted under existing law for making a false statement on the form (a Class 5 felony under § 18.2-308.2:2(K)). Similarly, the proposal is unlikely to expand the applicability of § 18.2-308.2:3(B) related to criminal history forms completed by employees of firearm dealers.

However, individuals who give or furnish a firearm to a person who is prohibited from possessing a firearm under the proposed § 18.2-308.1:8 would be guilty of a Class 4 felony under § 18.2-308.2:1. Existing data sources do not contain sufficient detail to estimate how many additional 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 provision.

According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2015 through FY2020, 19 individuals were convicted of selling or furnishing a firearm to an ineligible person. This was the primary, or most serious, offense in these cases. Approximately one-third (31.6%) received a local-responsible (jail) term with a median sentence of 6.5 months. Another 15.8% were sentenced to a state-responsible (prison) term for which the median sentence was 2.5 years. The remaining 52.6% of offenders did not receive an active term of incarceration to serve after sentencing.

In addition, offenders convicted of the proposed Class 1 firearm 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) 2015 through FY2020 Circuit Court Case Management System (CMS) data for all felony convictions under § 18.2-311.2 resulting from a third or subsequent misdemeanor firearms violation revealed that, during the six-year period, none of the offenders received a state-responsible (prison) sentence.

Impact of Proposed Legislation:

State adult correctional facilities. Offenders convicted of the proposed Class 1 misdemeanor offense under § 18.2-308.1:8 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 the existing felony offense under § 18.2-308.2:1, 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.¹

¹ 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.

Local adult correctional facilities. By creating a new Class 1 misdemeanor offense and expanding a felony offense, 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 convictions under §§ 18.2-308.2:1 or 18.2-311.2 are not covered by the sentencing guidelines when this crime is the primary, or most serious, offense in a case. However, a conviction for this offense 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 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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