



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#: 21200284

Date: 02/16/2021

Topic: Possession or transportation of firearms following certain convictions

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **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

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. Moreover, the proposal specifies that under § 18.2-308.2:1 (as effective on July 1, 2021), individuals who sell, barter, give, or furnish a firearm to a person who is prohibited from purchasing, possessing, or transporting a firearm under §§ 18.2-308.1:8 or 18.2-308.1:7 (persons enrolled into the Voluntary Do Not Sell Firearms List)¹ would be guilty of a Class 1 misdemeanor, rather than the Class 4 felony specified in that section.

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.

¹ The 2020 General Assembly of Virginia enacted § 18.2-308.1:7 (effective on July 1, 2021). Under § 18.2-308.1:7, any person who purchases, possesses or transports a firearm following an enrollment into the Voluntary Do Not Sell Firearms List would be guilty of a Class 3 misdemeanor.

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.

Furthermore, individuals who sell or furnish a firearm to a person who is prohibited from possessing a firearm under §§ 18.2-308.1:8 or 18.2-308.1:7 would be guilty of a Class 1 misdemeanor, not the existing Class 4 felony defined in current *Code*.

Offenders convicted of the proposed Class 1 misdemeanor under §§ 18.2-308.1:8 or 18.2-308.2:1 who accumulate three or more weapon convictions could be found guilty of a Class 6 felony under § 18.2-311.2. According to the Circuit Court CMS data for FY2015-FY2020, five offenders were convicted of a felony under § 18.2-311.2 for a third or subsequent weapon offense. The felony violation of § 18.2-311.2 was the primary, or most serious, offense in three of the cases. None of these offenders received a state-responsible (prison) sentence. The remaining offenders, whose primary offense was either attempted robbery or possession of firearm by a non-violent felon, were not sentenced to an active term of incarceration.

Impact of Proposed Legislation:

State adult correctional facilities. The proposed provisions are unlikely to expand the applicability of existing felony offenses under §§ 18.2-308.2:1, 18.2-308.2:2, or 18.2-308.2:3. Furthermore, while offenders convicted of the proposed Class 1 misdemeanor offense under §§ 18.2-308.1:8 or 18.2-308.2:1 could, in the future, be convicted of a Class 6 felony under § 18.2-311.2 if they accumulate three or more firearm convictions, the six most recent fiscal year data reveals that no offender convicted of a felony under § 18.2-311.2 has received a state-responsible (prison) sentence. Therefore, this 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.

Local adult correctional facilities. By establishing new Class 1 misdemeanors, 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 misdemeanor 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 § 18.2-311.2 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 is \$0 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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