

24106143D

HOUSE BILL NO. 362

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Public Safety
on February 2, 2024)

(Patron Prior to Substitute—Delegate McClure)

A BILL to amend and reenact § 18.2-308.1:8 of the Code of Virginia, relating to purchase, possession, or transportation of firearm following an assault and battery against a family or household member or an intimate or dating partner; penalty.

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-308.1:8 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-308.1:8. Purchase, possession, or transportation of firearm following an assault and battery of a family or household member or person in a dating relationship; penalties.

A. 1. Any person who knowingly and intentionally purchases, possesses, or transports any firearm following a misdemeanor conviction for an offense that occurred on or after July 1, 2021, for (i) the offense of assault and battery of a family or household member or (ii) an offense substantially similar to clause (i) under the laws of any other state or of the United States is guilty of a Class 1 misdemeanor.

2. Any person who knowingly and intentionally purchases, possesses, or transports any firearm following a misdemeanor conviction for an offense that occurred on or after July 1, 2024, for (i) the offense of assault and battery against an intimate or dating partner or (ii) an offense substantially similar to clause (i) under the laws of any other state or of the United States is guilty of a Class 1 misdemeanor.

B. For the purposes of this section, "family":

"Family or household member" means (i) the person's spouse, whether or not he resides in the same home with the person; (ii) the person's former spouse, whether or not he resides in the same home with the person; ~~or~~ (iii) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time; or (iv) any individual who cohabits or who, within the previous 12 months, cohabited with the person.

"Intimate or dating partner" means the either of two individuals who are or who have been in a social relationship of a romantic or intimate nature, whether or not they cohabitated, where the existence of such a relationship shall be determined based on a consideration of the following factors: the assertion by either party of the existence of an intimate or dating relationship; the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.

C. Any person prohibited from purchasing, possessing, or transporting a firearm pursuant to subsection A shall be prohibited from purchasing, possessing, or transporting a firearm for ~~three~~ five years following the date of the conviction at which point the person convicted of such offense shall no longer be prohibited from purchasing, possessing, or transporting a firearm pursuant to subsection A. Such person shall have his firearms rights restored, unless such person receives another disqualifying conviction, is subject to a protective order that would restrict his rights to carry a firearm, or is otherwise prohibited by law from purchasing, possessing, or transporting a firearm.

D. After a finding of guilt has been made and prior to entering a final order of conviction of an assault and battery as described in clause (i) of subdivision A 1 or clause (i) of subdivision A 2, the court shall determine by a preponderance of the evidence whether the victim of the offense was a family or household member or an intimate or dating partner. When such a determination is required, the court shall advise the defendant of its determination. Failure to make such determination or so advise the defendant does not otherwise invalidate the underlying conviction.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.