



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 173 (Patron – Simon)

LD#: 24104103

Date: 01/03/2024

Topic: Sale or possession of undetectable firearm components

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 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, 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 proposed legislation amends § 18.2-308.5 of the *Code of Virginia* to create a Class 5 felony for any person who knowingly manufactures or assembles, imports, purchases, sells, transfers, or possesses (i) any plastic firearm or (ii) any firearm that is not detectable as a firearm by the types of detection devices, including X-ray machines, commonly used at airports, government buildings, schools, and other locations for security screening.

Currently, under § 18.2-308.5, it is a Class 5 felony for any person to manufacture, import, sell, transfer or possess any plastic firearm as defined in that section. The proposed legislation would expand the Class 5 felony defined in § 18.2-308.5 to include any firearm that, after removal of all parts other than a major component (as defined in the bill), is not detectable as a firearm by the types of detection devices commonly used for security screening.

In addition, the proposal adds § 18.2-308.5:2 to the *Code*. Under the proposed § 18.2-308.5:2(B), it would be unlawful for any person to knowingly import, purchase, sell, offer for sale, or transfer ownership of any completed or unfinished frame or receiver, unless the completed or unfinished frame or receiver (i) is deemed to be a firearm pursuant to federal law, and (ii) is imprinted with a valid serial number. Under the proposed § 18.2-308.5:2(C), it would be unlawful for any person to manufacture or assemble, cause to be manufactured or assembled, import, purchase, sell, offer for sale, or transfer ownership of any firearm that is not imprinted with a valid serial number. Under the proposed § 18.2-

308.5:2(D), it would be unlawful for any person who does not have a valid federal license to manufacture or assemble firearms to sell or transfer ownership of a firearm, except as authorized by law. The proposal specifies that any person who violates the proposed § 18.2-308.5:2 would be guilty of a Class 1 misdemeanor. A second or subsequent violation under this provision would be punishable as a Class 4 felony. The provisions of the proposed § 18.2-308.5:2 have a delayed effective date of January 1, 2025.

Pursuant to § 18.2-311.2, a third or subsequent Class 1 misdemeanor weapons violation (defined in Article 4, 5, 6, or 7 of Chapter 7 of Title 18.2) is punishable as a Class 6 felony.¹

Analysis:

According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2018 through FY2023, there were no convictions under § 18.2-308.5 during the most recent six-year period.

Offenders convicted of the proposed Class 1 misdemeanors 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 the same six-year period, three 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 for all three offenders. All three offenders received state-responsible (prison) terms for which the median sentence was 1.3 years.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding existing felonies and creating a new felony offense for which imprisonment is authorized, the proposal may increase the future 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 that may result from enactment of the proposal. Therefore, the magnitude of the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. By defining new misdemeanor crimes and expanding existing felonies, the proposal may also increase local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

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 state community corrections resources. Since the number of cases that may be affected by the proposal cannot be determined, the potential impact on community corrections cannot be quantified.

Virginia's Sentencing Guidelines. Felony convictions under § 18.2-308.5 are not covered by the Sentencing Guidelines when this offense is the primary, or most serious, offense in a case. As a new felony, conviction under the proposed § 18.2-308.5:2 also would not be covered. However, convictions under these statutes could augment the Guidelines recommendation if the most serious offense at sentencing is covered by the Guidelines. These offenses are not defined as violent under § 17.1-805(C) for the purposes of 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.

¹ Under current law, the felony offenses defined in §§ 18.2-308.5 and 18.2-311.2 are eligible for the enhanced sentence credits specified in § 53.1-202.3, whereby offenders will serve a minimum of 67% of the sentence ordered by the court. The proposed legislation does not change the earned sentence credits available to offenders convicted of these felonies.

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 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, 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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