



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 22 **Amendment in the Nature of a Substitute** **Proposed by the Senate Committee for Courts of Justice** *(Patron Prior to Substitute – Jones)*

LD#: 24107867

Date: 02/20/2024

Topic: Manufacture, importation, sale, possession, transfer, or transportation of auto sear

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 proposal expands § 18.2-308.5:1 of the *Code of Virginia* to prohibit the manufacturing, importing, selling, offering for sale, possessing, transferring, or transporting an auto sear in the Commonwealth. As proposed, it would be a Class 6 felony for any person to manufacture, etc., an auto sear in the Commonwealth.¹ The proposal defines an auto sear in the same section as “a device, other than a trigger activator, designed for use in converting a semi-automatic firearm to shoot automatically more than one shot, without manual reloading, by a single function of the trigger.”

The proposal also amends § 19.2-386.28 to include auto sear in the list of weapons to be forfeited to the Commonwealth following specified violations.

Analysis:

Existing databases do not provide sufficient detail to identify the number of new convictions likely to result from enactment of the proposal. However, affected offenders may be sentenced similarly to those currently convicted of a Class 6 felony under § 18.2-308.5:1 for the manufacture, importation, sale, possession, transfer, or transportation of a trigger activator. That provision became effective on July 1, 2020.

¹ The felony offense defined in § 18.2-308.5:1 is 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.

According to Circuit Court Case Management System (CMS) data for fiscal year (FY) 2021 to FY2023, four offenders were convicted under § 18.2-308.5:1 for the manufacture, etc., of a trigger activator. In three of these cases, § 18.2-308.5:1 was the primary, or most serious, offense in the sentencing event. Two of these defendants received probation without an active term of incarceration, and one defendant received a local-responsible (jail) sentence of one month. The remaining defendant convicted under § 18.2-308.5:1 had larceny of a firearm as the primary offense in the sentencing event and five additional gun-related charges; this individual received a state-responsible (prison) sentence of two years.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding an applicability of a Class 6 felony, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. 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. Similarly, the proposal may also increase local-responsible (jail) bed space needs. However, 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. Convictions under § 18.2-308.5:1 would not be covered by the Sentencing Guidelines as the primary, or most serious, offense. A conviction under this provision, however, could augment the Guidelines recommendation (as an additional offense) if the most serious offense at sentencing is covered by the Guidelines. The proposed felony would not be defined as violent under § 17.1-805(C) for Guidelines purposes. 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 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.