



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2 Amendment in the Nature of a Substitute (Patron Prior to Substitute – Helmer)

LD#: 24105958

Date: 01/25/2024

Topic: Assault firearms and ammunition feeding devices

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 adds several sections to the *Code* and amends others related to assault firearms and ammunition feeding devices. Under the proposed § 18.2-287.4:1, it would be a Class 1 misdemeanor for any person to import, sell, manufacture, purchase, or transfer an assault firearm, as defined in the bill. The definition of assault firearm does not include firearms manufactured before July 1, 2024. Exceptions for certain persons and entities are provided. Under the proposed § 18.2-287.4:2, it would be a Class 1 misdemeanor for any person younger than 21 years of age to import, sell, manufacture, purchase, possess, transport or transfer an assault firearm, regardless of the date of manufacture of such assault firearm. Under the proposed § 18.2-308.1:9, any person convicted of importing, selling, etc., an assault firearm, or of violating the provisions of § 18.2-308.1:9 would be prohibited from purchasing, possessing or transporting any firearm for three years following such conviction; possessing a firearm during the three-year prohibition period would be a Class 1 misdemeanor. It would also be a Class 1 misdemeanor, under § 18.2-308.2:1, to sell or give a firearm to an ineligible person during the three-year prohibition period.

The proposal also amends § 18.2-308.2:5 to make it a Class 1 misdemeanor for any person to sell or purchase an assault firearm and adds § 18.2-309.1 to make it a Class 1 misdemeanor to import, sell, or transfer large capacity ammunition feeding devices, as defined in the bill. As the proposal expands the definition of assault firearm, it also amends § 18.2-308.7 by eliminating the currently existing definition of assault firearm and restricting the applicability of provisions under § 18.2-308.7 to only possession or transportation of handguns by persons under the age of 18.

Finally, the proposal amends the criminal history record check required for purchasing a firearm from a licensed dealer (§ 18.2-308.2:2) by adding a question to the form completed by the prospective buyer. The new question would ask the prospective buyer if he has been convicted of possessing a firearm during the three-year prohibition period following a conviction for the sale, etc., of an assault firearm. With the proposed changes to § 18.2-308.2:2, dealers would be prohibited from selling assault rifles to any person and from selling certain semi-automatic center-fire rifles or pistols to anyone who is not a citizen of the United States or who is not lawfully admitted for permanent residence.

The proposed § 18.2-308.1:9 parallels the language of the current § 18.2-308.1:8, enacted by the 2021 General Assembly, Special Session I, which makes it a Class 1 misdemeanor for any person to possess, etc., a firearm following a misdemeanor conviction for assault and battery of a family or household member.

The proposal would expand the potential applicability of several existing felony offenses. Under § 18.2-308.2:2(K), making a materially false statement on a consent form that is required to purchase a firearm from a licensed dealer is a Class 5 felony. Under § 18.2-308.2:2(L), it is a Class 6 felony for any firearms dealer to willfully and intentionally sell, rent, trade, or transfer a firearm in violation of this section. Per § 18.2-308.2:2(L1), any person who attempts to solicit or entice a dealer to transfer a firearm other than to the actual buyer is guilty of a Class 6 felony. Pursuant to § 18.2-308.2:2(M), purchasing a firearm with the intent to transfer it to an individual who is ineligible to purchase a firearm from a dealer is a Class 4 felony that carries a mandatory minimum term of one year. Offenders who transfer more than one firearm in violation of § 18.2-308.2:2(M) are subject to a mandatory minimum term of five years. Subsection N of § 18.2-308.2:2 makes it a Class 4 felony for any person ineligible to purchase or possess a firearm to solicit, employ, or assist any person in purchasing a firearm in violation of § 18.2-308.2:2(M); a violation of this subsection also carries a mandatory minimum term of five years.¹

Individuals convicted of certain Class 1 misdemeanor firearm offenses who accumulate three or more such convictions may be found guilty of a Class 6 felony under § 18.2-311.2.¹

Analysis:

Existing data sources do not contain sufficient detail to estimate the number of additional convictions that may result from enactment of the proposal. However, individuals convicted under various aspects of the proposal may be sentenced similarly to those convicted under the existing weapons provisions. For example, individuals convicted of the proposed Class 1 misdemeanor offenses may be sentenced in the same manner as defendants currently convicted of reckless handling of a firearm under § 18.2-56.1(A). See table below.

¹ Under current law, felony offenses defined in §§ 18.2-308.2:2 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.

Offenders Convicted of Select Felony Firearm Offenses, FY2022-FY2023

Primary Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
Reckless handling of firearm – Class 1 misd. (§ 18.2-56.1(A)) ^a	562	66.5%	33.5%	1.3 mos.	N/A	N/A
Possess, etc., a firearm following misd. conviction for assault and battery of a family member – Class 1 misd. (§ 18.2-308.1:8) ^a	47	78.7%	21.3%	13 days	N/A	N/A
Third or subsequent misd. firearm violation (§ 18.2-311.2) – Class 6 felony ^b	3	N/A	N/A	N/A	100.0%	1.3 yrs.
False statement on record check consent form – Class 5 felony (§ 18.2-308.2:2(K)) ^c	270	81.9%	14.4%	7.0 mos.	3.7%	1.1 yrs.
Dealer sell/transfer firearm in violation of section – Class 6 felony (§ 18.2-308.2:2(L)) ^b	0	N/A	N/A	N/A	N/A	N/A
Solicit, etc., dealer to transfer firearm to another – Class 6 felony (§ 18.2-308.2:2(L1)) ^b	2	100%	N/A	N/A	N/A	N/A
Purchase firearm to provide to ineligible person – Class 4 felony (§ 18.2-308.2:2(M,i)) ^b	0	N/A	N/A	N/A	N/A	N/A
Transport firearm out of state to provide to ineligible person – Class 4 felony (§ 18.2-308.2:2(M,ii)) ^b	0	N/A	N/A	N/A	N/A	N/A
Solicit violation of § 18.2-308.2:2(M) – Class 4 felony (§ 18.2-308.2:2(N)) ^b	3	0%	0%	N/A	100%	7.0 yrs.

Note: Analysis is based on cases in which the specified offense was the primary, or most serious, offense in the sentencing event.

Sources: ^a Supreme Court of Virginia - General District Court Case Management System (CMS), FY2022-FY2023;

^b Supreme Court of Virginia - Circuit Court Case Management System (CMS), FY2022-FY2023;

^c Virginia Criminal Sentencing Commission - Sentencing Guidelines Database, FY2022-FY2023.

Impact of Proposed Legislation:

State adult correctional facilities. Because it expands the potential applicability of existing felony offenses, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal; therefore, the magnitude of the impact on prison bed space needs cannot be quantified.

Local adult correctional facilities. Similarly, the proposal may increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be determined.

Adult community corrections resources. Because the proposal could result in 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 affected cannot be determined, the potential impact on community corrections cannot be estimated.

Virginia's Sentencing Guidelines. Felony convictions under the affected statutes (except subsection K under § 18.2-308.2:2) are not covered by the Sentencing Guidelines when these crimes are the primary, or most serious, offense in a case. Such convictions may augment the Guidelines recommendation (as additional offenses) if the most serious offense at sentencing is covered by the Guidelines. Felony convictions under § 18.2-308.2:2(K) are covered by the Guidelines as the primary offense.

Felony offenses in subsections M and N of § 18.2-308.2:2 are defined as violent under § 17.1-805(C) for Guidelines purposes; all other offenses in that statute and in § 18.2-311.2 are not defined as violent. 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 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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