



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill 2241

(Patron – Tran)

LD#: 25102019

Date: 12/27/2024

Topic: Possession or transportation of firearms by certain persons

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$18,796 (less than 1 bed)
- **Local Adult Correctional Facilities:**
None (\$0)
- **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

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:

Currently, under § 18.2-308.2, any person who 1) has been convicted of a felony, 2) was adjudicated as a juvenile 14 years of age or older for certain offenses, or 3) is under age 29 and was adjudicated as a juvenile 14 years of age or older for an offense that would be felony if committed by an adult is prohibited from possessing or transporting a firearm, ammunition, stun weapon, or any explosive material. Violation of § 18.2-308.2 is a Class 6 felony.¹ Any person who violates this section and who was previously convicted of a violent felony as defined in § 17.1-805 must be sentenced to a mandatory term of five years. Any person who violates this section and who was previously convicted of any other felony within the prior 10 years must be sentenced to a mandatory minimum term of two years. The mandatory minimum terms of imprisonment must be served consecutively with any other sentence.

The proposal would expand § 18.2-308.2 to prohibit a person from possessing or transporting a firearm, ammunition, stun weapon or explosive material if he is convicted of a misdemeanor assault and he intentionally selected the person against whom the offense was committed because of his race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin.

Analysis:

According to General District Court Case Management System (CMS) data for fiscal year (FY) 2019 through FY2024, a misdemeanor hate-crime assault (under the existing § 18.2-57(A)) was the primary, or

¹ Under current law, the felony offenses defined in § 18.2-308.2 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 this felony.

most serious, offense at sentencing for 44 offenders. Of these, 26 offenders (59.1%) were sentenced to local-responsible (jail) terms with a median sentence length of 2.4 months. The remaining 18 offenders (40.9%) did not receive an active term of incarceration to serve after sentencing.

Circuit Court CMS data for the same six-year period indicate that another 22 offenders were convicted in circuit court of a misdemeanor hate-crime assault under § 18.2-57(A) as the primary offense (for these offenders, all felony charges were nolle prossed, dismissed, resulted in a not guilty finding, or were reduced to misdemeanors). Of these, 77.3% were sentenced to a local-responsible (jail) term with a median sentence of six months. The remaining offenders did not receive an active term of incarceration to serve after sentencing.

Under the proposal, individuals convicted of a misdemeanor hate-crime assault would be subject to a Class 6 felony under § 18.2-308.2 if they subsequently possess or transport a firearm or other prohibited weapon. Such individuals may be sentenced similarly to those convicted under § 18.2-308.2 currently when no mandatory minimum applies (no mandatory minimum applies if the underlying felony conviction occurred more than 10 years ago). According to Sentencing Guidelines data for FY2019 through FY2024, 1,834 offenders were convicted of a Class 6 felony under § 18.2-308.2 and were not subject to a mandatory minimum. Of these, 38.4% received a state-responsible (prison) term for which the median sentence was 1.5 years. Another 34.1% were given a local-responsible (jail) sentence with a median sentence of 7.0 months. The remaining defendants (27.5%) received probation without an active term of incarceration.

Analysis of FY2016-FY2017 Sentencing Guidelines data revealed that 6.0% of felons were convicted under § 18.2-308.2 for unlawfully possessing or transporting a firearm within six years following the original conviction. Another 1.0% were convicted under § 18.2-308.2 for unlawfully possessing or transporting some other prohibited weapon or ammunition within six years of the original conviction.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of an existing felony for which imprisonment is authorized, the proposal is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. The impact is estimated to be less than one bed by FY2031. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$18,796. This analysis assumes that offenders affected by the proposal will be convicted of unlawfully possessing a firearm or other prohibited weapon at the same rate as felony offenders do currently.

Local adult correctional facilities. The proposal is not expected to impact the need for local-responsible (jail) beds.

Adult community corrections resources. The net impact on state community corrections resources versus local community-based probation services cannot be estimated.

Virginia's Sentencing Guidelines. Felony convictions under § 18.2-308.2 are covered by the Sentencing Guidelines as the primary (most serious) offense. Felony offenses in § 18.2-308.2 are defined as violent in § 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. According to the Department of Juvenile Justice, the impact of the proposal 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 is \$18,796 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.

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety’s Committee on Inmate Forecasting in 2024.
2. New cases resulting in state-responsible sentences were based on forecasts approved by the Secretary of Public Safety’s Committee on Inmate Forecasting in 2024.
3. Cost per prison bed was assumed to be \$54,915 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*
4. Cost per jail bed was based on The Compensation Board’s FY2023 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$56.38 per day or \$20,593 per year. The local cost was calculated by using the daily expenditure cost of \$148.62 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$86.82 per day or \$31,711 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

Assumptions relating to offenders

1. It was assumed that all offenders convicted of misdemeanor hate-crime assault (§ 18.2-57(A)) would be subject to the prohibitions regarding firearms and other weapons specified in § 18.2-308.2.
2. The Commission tracked a cohort of felons convicted in FY2016 and FY2017 for six years following their original conviction to determine the percentage of these individuals who were later convicted under § 18.2-308.2 for unlawfully possessing or transporting a firearm or other prohibited weapon.
3. It was assumed that individuals convicted of misdemeanor hate-crime assault would later be convicted under § 18.2-308.2 at the same rate as the cohort of felons examined.

Assumptions relating to sentencing and time served

1. The impact of the proposed legislation, which would be effective on July 1, 2025, is phased in to account for case processing time.
2. Affected offenders were assumed to receive sentences similar to offenders convicted under § 18.2-308.2 currently when no mandatory minimum applies (no mandatory minimum applies if the underlying felony conviction occurred more than 10 years ago).
3. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections’ facilities were earning sentence credits as of August 30, 2024. For affected offenders sentenced during the forecast horizon, the overall average rate of sentence credits earned by individuals convicted of weapons offenses and eligible for enhanced sentence credits was estimated to be 27.9% of the total sentence.

Limitations

1. The analysis does not include circuit court cases from Alexandria as the data are unavailable.