



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

**House Bill No. 362**  
**Amendment in the Nature of a Substitute**  
**Proposed by the Senate Committee for Courts of Justice**  
*(Patron Prior to Substitute – McClure)*

**LD#:** 24108243

**Date:** 02/26/2024

**Topic:** Possession or transportation of firearms following certain convictions

**Fiscal Impact Summary:**

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| <ul style="list-style-type: none"> <li>• <b>State Adult Correctional Facilities:</b><br/>\$50,000 *</li> <li>• <b>Local Adult Correctional Facilities:</b><br/>Cannot be determined</li> <li>• <b>Adult Community Corrections Programs:</b><br/>Cannot be determined</li> </ul> | <ul style="list-style-type: none"> <li>• <b>Juvenile Direct Care:</b><br/>Cannot be determined **</li> <li>• <b>Juvenile Detention Facilities:</b><br/>Cannot be determined **</li> </ul> <p>** Provided by the Department of Juvenile Justice</p> |
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\* 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.

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**Summary of Proposed Legislation:**

Currently, under § 18.2-308.1:8 it is a Class 1 misdemeanor for any person to purchase, possess, or transport a firearm following a misdemeanor conviction for assault and battery against a family or household member. The proposal expands the definition of family or household member for the purposes of this statute to include any person who cohabits or who, within the previous 12 months, cohabitated with the individual.

The proposal also amends § 18.2-308.1:8 to make it a Class 1 misdemeanor to purchase, possess, or transport a firearm following a misdemeanor conviction for an offense that occurs on or after July 1, 2024, involving assault and battery against an intimate partner, as defined in the bill.

Under current law, anyone who sells or furnishes a firearm to a person ineligible to receive such a weapon, due to that individual’s prior conviction for assault and battery of a family or household member or their presence on the Commonwealth’s Do Not Sell List, is guilty of a Class 1 misdemeanor under § 18.2-308.2:1.

Individuals convicted of certain Class 1 misdemeanor weapons offenses who accumulate three or more such convictions may be found guilty of a Class 6 felony under § 18.2-311.2.<sup>1</sup>

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<sup>1</sup> Under current law, felony offenses defined in § 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. The felony offense defined in § 18.2-57.2, however, does not qualify for the enhanced sentence credits and the offender will serve a minimum of 85% of the court’s sentence.

The proposal also amends § 16.1-228, expanding the definition of a “family or household member” to include a person’s intimate partner. This language expands the applicability of § 18.2-57.2 regarding assault of a family or household member. A violation of this section is a Class 1 misdemeanor; a third or subsequent conviction is a Class 6 felony.

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**Analysis:**

According to the General District Court Case Management System (CMS) for fiscal year (FY) 2022 through FY2023, 47 offenders were convicted of possessing, purchasing, or transporting a firearm following a misdemeanor conviction for assault and battery of a family or household member under § 18.2-308.1:8. Of these, 21.3% received a local-responsible (jail) term with a median sentence of 13 days. The remaining 78.7% of offenders did not receive an active term of incarceration to serve after sentencing. Four offenders were convicted of a Class 1 misdemeanor for selling or furnishing a firearm to an ineligible person under § 18.2-308.2:1; none of these individuals received an active term of incarceration to serve after sentencing.

Offenders convicted of the proposed Class 1 misdemeanor 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 fiscal year (FY) 2018 through FY2023, 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.

According to the Juvenile and Domestic Relations Court CMS data for FY2022 through FY2023, 7,525 offenders were convicted of simple assault of a family or household member as their primary offense at sentencing. Of these, 37.0% received jail terms with a median sentence of 1.3 months. The remaining 63.0% of offenders did not receive an active term of incarceration to serve after sentencing. Sentencing Guidelines data from the same two-year period revealed that 353 offenders were convicted of a third or subsequent assault on a family member; for 284 offenders, this offense was their primary offense at sentencing. Of these, 46.8% were sentenced to jail with a median sentence of seven months. Another 31.7% were sentenced to prison with a median sentence of 1.5 years. The remaining 21.5% of offenders did not receive an active term of incarceration to serve after sentencing.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By expanding the applicability of existing felonies, 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 the proposal. Therefore, the magnitude of the impact on prison bed space needs cannot be determined.

**Local adult correctional facilities.** By expanding the applicability of existing felony and misdemeanor crimes and creating a new Class 1 misdemeanor, the proposal may increase local-responsible (jail) bed space needs. Because the number of new convictions resulting from the proposal cannot be determined, the magnitude of the impact on jail beds cannot be estimated.

**Adult community corrections programs.** Because the proposal could result in misdemeanor and felony 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 that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

**Virginia’s Sentencing Guidelines.** Felony convictions under § 18.2-57.2 are covered by the Sentencing Guidelines when this offense is the primary (most serious) offense. This offense is defined as violent under § 17.1-805(C) for the purposes of the Guidelines. Felony convictions under § 18.2-311.2 are not covered by the Guidelines; such a conviction, however, could augment the Guidelines recommendation (as an additional offense) if the most serious offense at sentencing is covered by the Guidelines. This offense is 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.

**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.

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**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.**

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