

Department of Planning and Budget 2024 Session Fiscal Impact Statement

1. Bill Number: HB362H1

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: McClure

3. Committee: Committee on Public Safety

4. Title: Purchase, possession, or transportation of firearm following an assault and battery.

5. Summary: The substitute bill provides that any person who knowingly and intentionally purchases, possesses, or transports any firearm following a misdemeanor conviction for an offense that occurred on or after July 1, 2024, for the offense of assault and battery against an intimate or dating partner, as defined in the bill, with the alleged offender or an offense substantially similar under the laws of any other state or of the United States is guilty of a Class 1 misdemeanor.

The substitute also provides that after a finding of guilt has been made and prior to entering a final order of conviction of an assault and battery as described in clause (i) of subdivision A 1 or clause (i) of subdivision A 2, the court must determine by a preponderance of the evidence whether the victim of the offense was a family or household member or an intimate or dating partner. When such a determination is required, the court must advise the defendant of its determination. Failure to make such determination or so advise the defendant does not otherwise invalidate the underlying conviction.

6. Budget Amendment Necessary: Yes, Item 390.

7. Fiscal Impact Estimates: Preliminary (see Item 8 below).

8. Fiscal Implications: The proposed legislation creates a new Class 1 misdemeanor for possessing a firearm after a conviction of assault and battery against an intimate or dating partner. Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail and a fine of not more than \$2,500, either or both.

There is not enough information available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays localities \$5.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail. It also funds a large portion of the jails' operating costs, e.g., correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2023), the estimated total state support for local jails averaged \$45.76 per inmate, per day in FY 2022.

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 (third conviction of firearm offenses). According to the Circuit Court CMS data from the Virginia Criminal Sentencing Commission for FY 2018 through FY 2023, 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 percent received a local-responsible (jail) term with a median sentence of 13 days. The remaining offenders did not receive an active term of incarceration to serve after sentencing.

According to the Circuit Court CMS data for FY 2018 through FY 2023 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.

The bill may result in additional bed space needs at local jails and the Department of Corrections. However, due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 1, 2023 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

9. Specific Agency or Political Subdivisions Affected: Courts, Commonwealth’s Attorneys, Public Defender’s Offices, Department of Corrections, law enforcement agencies, and local and regional jails.

10. Technical Amendment Necessary: No.

11. Other Comments: None.