



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2653

Amendment in the Nature of a Substitute (Patron Prior to Substitute – Lingamfelter)

LD#: 07-5925380

Date: 2/20/2007

Topic: Illegal conveyance of firearms

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

Summary of Proposed Legislation:

The proposal expands § 18.2-308.2:2 to make it unlawful for any person other than a law enforcement officer (including federal), or other person under his direct supervision, to solicit, persuade, encourage, or entice a firearm dealer to sell or convey a gun other than to an actual buyer. The proposal also makes it unlawful to intentionally aid or abet a person who commits this offense. Violation is punishable as a Class 6 felony. An “actual buyer” is defined in the proposal as a person who purchases or otherwise acquires a firearm for himself or as a legitimate gift for a third party.

Currently, under § 18.2-308.2:2, a person wishing to purchase a firearm from a dealer must complete the consent form and submit to a criminal history record check performed by the State Police. The dealer must receive authorization from the State Police to complete the sale or transfer of the firearm. It is a Class 5 felony to willfully and intentionally make a material false statement on the consent form required by the State Police. Purchasing a firearm to resell or transfer it to a person who is ineligible to buy a firearm is a Class 5 felony and carries a mandatory minimum penalty of five years if the offense involves multiple guns. If a person who is ineligible to purchase a firearm employs or solicits another to buy or transfer a gun for him, it is a Class 5 felony with a mandatory minimum term of five years.

A dealer who sells or transfers a firearm in violation of this statute is guilty of a Class 6 felony.

Analysis:

According to fiscal year (CY) 2004 and CY2005 Pre/Post Sentence Investigation (PSI) data, 57 offenders were convicted of a Class 5 felony under § 18.2-308.2:2. Nearly all of these offenders were convicted of making a material false statement on a consent form. Most of the offenders received probation without an active incarceration. The majority of those sentenced to incarceration were given a local-responsible (jail) term. For offenders committed to jail, the median sentence was six months. Sentencing information for the Class 5 felony crimes under § 18.2-308.2:2 is shown below.

CY2004 and CY2005 Felony Sentencing Information

Felony Offense	Total Cases	Disposition				
		No Active Incarceration	Local-Responsible (Jail)		State-Responsible (Prison)	
		% of Cases	% of Cases	Median Sentence	% of Cases	Median Sentence
§ 18.2-308.2:2(K) – Make material false statement on consent form	55	70.9%	23.6%	6 mos	5.5%	2 yrs
§ 18.2-308.2:2(M) – Purchase a firearm to resell or transfer it to an ineligible person	2	50%	50%	1 mo	0%	--
§ 18.2-308.2:2(N) – Ineligible person employs or solicits another to buy or transfer a gun	0	0%	0%	--	0%	--

Note: Sentence data reflects the total effective sentence (imposed less suspended time) for all offenses in the same sentencing hearing. The median sentence is the middle value, above and below which lie an equal number of cases.

Data Source(s): Pre/Post-Sentence Investigation (PSI) database.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding existing felony provisions, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The number of additional felony convictions that may result from the proposal cannot be estimated; therefore, the impact of the proposal on prison beds cannot be determined.

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

Adult community corrections resources. Because the proposal will likely result in additional felony offenders on community supervision, an impact on community corrections resources is expected. However, full cost of the impact on adult community corrections cannot be determined.

Virginia's sentencing guidelines. Convictions under § 18.2-308.2:2 are not covered by Virginia's sentencing guidelines as the primary (most serious) offense at event. However, convictions under this statute may augment the guidelines recommendation if a covered offense is the most serious at conviction. No adjustment to the guidelines would be necessary as a result of the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

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 and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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