



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2251

(Patron – Lopez)

LD #: 13103882

Date: 1/14/2013

Topic: Prohibition of sale or transfer of certain firearms magazines

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
Cannot be determined
- **Juvenile Detention Facilities:**
Cannot be determined

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal adds § 18.2-309.1 to the *Code* relating to the sale or transfer of certain “large capacity” firearms magazines. Under the proposal, a “large capacity magazine” is defined as any ammunition feeding device with the capacity to accept more than 20 rounds, or any kit or combination of parts from which such a device can be assembled. Any person, corporation, or other entity that manufactures, possesses, sells, or transfers any large capacity magazine would be subject to a fine of \$1,000. Several exemptions to these provisions, including law-enforcement and members of the armed forces, are noted.

Pursuant to the proposed § 18.2-309.1(D), any person who, prior to July 1, 2013, was legally in possession of a large capacity magazine would have 120 days to (i) remove the firearm or magazine from the Commonwealth; (ii) sell the magazine to a licensed dealer; (iii) surrender the magazine to law-enforcement for destruction; or (iv) register possession of the magazine with the Department of State Police. No individual would be allowed to possess more than three large capacity magazines. The proposal also amends § 19.2-386.29 to provide for the forfeiture to the Commonwealth of any large capacity magazine that is the subject of any violation of the proposed § 18.2-309.1.

Under the proposal, any person seeking to register or reregister possession of a large capacity magazine would be required to submit to a criminal history record check. The proposal specifies that the processes established for the criminal history record checks must conform to the provisions of § 18.2-308.2:2; therefore, they would parallel the existing processes for licensed firearms dealers and their prospective buyers. The proposal also contains language that mirrors existing language in § 18.2-308.2:2(K). Under the proposal, making a materially false statement on a consent form required to register possession of a large capacity magazine would be a Class 5 felony.

Under existing law, “assault firearms” includes firearms that are equipped with a magazine that holds more than 20 rounds. Under § 18.2-308.2:01(A), the possession or transportation of an assault firearm by any person who is not a US citizen or who is not lawfully admitted for permanent residence is a Class 6 felony. Section 18.2-308.2:2 makes it a Class 6 felony for a firearms dealer to sell, rent, trade, or transfer an assault firearm to any person who is not a US citizen or who is not lawfully admitted for permanent residence. Under § 18.2-308.7, possession of an assault firearm by a person under the age of 18 is a Class 1 misdemeanor. However, pursuant to § 18.2-311.2, a third or subsequent misdemeanor firearm violation (defined in Article 4, 5, 6, or 7 of Chapter 7 of Title 18.2) is a Class 6 felony.

Section 18.2-287.4 makes it a Class 1 misdemeanor to carry certain loaded firearms with a magazine that holds more than 20 rounds of ammunition in public places in enumerated jurisdictions. According to § 18.2-308.8, the possession, sale, etc., of Striker 12’s or like firearms, including semi-automatic folding stock shotguns with spring tension drum magazines capable of holding 12 shotgun shells, is punishable as a Class 6 felony.

Analysis:

Existing data do not contain sufficient detail to determine the number of instances in which an individual commits an act that would be a violation of the proposed provision and that is not already covered under statutes as currently written. However, offenders convicted under the proposal may be sentenced similarly to those who are currently convicted under existing statutes.

According to fiscal year (FY) 2011 and FY2012 Sentencing Guidelines Database data, there were 116 felony convictions under § 18.2-308.2:2(K) for providing false statements on a consent form. This offense was the primary, or most serious, offense in 107 of the cases. The majority (74.8%) of these offenders did not receive an active term of incarceration to serve after sentencing and 20.6% of the offenders were sentenced to a local-responsible (jail) term, for which the median sentence was five months. The remaining 4.7% were sentenced to a state-responsible (prison) term. For offenders committed to prison, the median sentence length was 1 year and 9 months.

According to the Circuit Court Case Management System (CCMS)¹ for FY2011 and FY2012, two offenders were identified as being convicted of a Class 6 felony under § 18.2-308.2:01(A) for the possession or transportation of an assault firearm by an alien. The firearm offense was the primary, or most serious, offense in one of the cases; this offender was sentenced to a local-responsible (jail) term of five months.

Data from the General District Court Case Management System¹ for FY2011 and FY2012 indicates eight offenders were convicted of a Class 1 misdemeanor under §§ 18.2-287.4 or 18.2-308.7 for a firearms violation. The majority (75%) of these offenders did not receive an active term of incarceration to serve after sentencing. The remaining two offenders were sentenced to local-responsible (jail) terms of approximately one and two months, respectively.

These data do not include cases adjudicated in Virginia’s Juvenile and Domestic Relations (JDR) Courts.

Impact of Proposed Legislation:

State adult correctional facilities. By establishing a new Class 5 felony, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing data do not provide sufficient detail to estimate the number of new felony convictions that could result from enactment of the proposal. Therefore, the impact on prison bed space needs cannot be determined.

¹ Formerly referred to as the Court Automated Information System (CAIS).

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

Adult community corrections programs. Because the proposal could result in 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. Making a false statement on a consent form required to purchase a firearm under § 18.2-308.2:2(K) is covered under the sentencing guidelines as the primary (most serious) offense in a case. As a new felony, convictions under the proposed § 18.2-309.1 would not be covered; however, a conviction under this provision can augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice, the proposal may have an impact on juvenile correctional center bed space needs. However, the actual impact on juvenile correctional center bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that, while the proposal may have an impact on juvenile detention bed space needs, the actual impact on 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 3 of the Acts of Assembly of 2012, 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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