



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 39
Amendment in the Nature of a Substitute
(Patron Prior to Substitute – Marsden)

LD#: 14104063

Date: 1/22/2014

Topic: Criminal history checks at firearms shows

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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 806 of the 2013 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

This proposal would add § 54.1-4201.2 to the *Code of Virginia* to require firearms show promoters to make one or more licensed Virginia firearms dealers available to conduct criminal history checks to determine whether a prospective buyer is prohibited from possessing a firearm under state or federal law. Firearms show promoters would also be required to prominently display a notice at the show that criminal history record checks are available. The proposed statute would essentially allow firearms show vendors to obtain verification that a prospective buyer is prohibited from possessing a firearm under state or federal law, if they wish to do so.

Currently, under § 18.2-308.2:1, it is a Class 4 felony to sell, etc., a firearm to a person known to be prohibited from possessing or transporting firearms for certain reasons, such as having been convicted of a felony or found legally incompetent. Consequently, if a firearms show vendor chooses to request a criminal history check and determines that the prospective buyer is prohibited from purchasing a firearm, completing the transaction would make the vendor guilty of a Class 4 felony. Under § 18.2-308.2:2, making a materially false statement on a consent form that is required to purchase a firearm from a licensed dealer is a Class 5 felony. Any person who willfully and intentionally sells, rents, trades, or transfers a firearm in violation of these provisions is guilty of a Class 6 felony. Willfully and intentionally requesting or obtaining criminal history information under false pretenses or unlawfully disseminating criminal history record information is a Class 2 misdemeanor.

Analysis:

According to fiscal year (FY) 2012 and FY2013 Sentencing Guidelines Database data, there were 103 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 99 of the cases. The majority (75.8%) of these offenders did not receive an active term of incarceration to serve after sentencing and 18.2% of the offenders were sentenced to a local-responsible (jail) term, for which the median sentence was five months. The remaining 6.1% were sentenced to a state-responsible (prison) term. For offenders committed to prison, the median sentence length was 1 year and 6 months.

The Circuit Court Case Management System (CMS)¹ for FY2012 and FY2013 indicates that no offenders were convicted of a Class 6 felony under § 18.2-308.2:2(L) relating to dealers selling or transferring firearms in violation of § 18.2-308.2:2. Circuit Court CMS data also indicate that 17 offenders were convicted under § 18.2-308.2:1 for selling, bartering, giving, or furnishing a firearm to a person known to be prohibited from possessing or transporting a firearm. This charge was the primary, or most serious, offense in six of the cases. Five of the six offenders did not receive an active term of incarceration to serve after sentencing. The remaining offender was sentenced to a local-responsible (jail) term of six months. Although no offenders received a state-responsible (prison term) for a violation of § 18.2-308.2:1 between FY2012 and FY2013, one offender was sentenced to a prison term of one year for this offense in FY2011.

Impact of Proposed Legislation:

State adult correctional facilities. According to the Virginia State Police (VSP), licensed firearms dealers are required to conduct background checks on their potential buyers, even when the dealer conducts the sale at a firearms show. VSP reports that they have arrested individuals for making a false statement on the consent form currently required by § 18.2-308.2:2 when the transaction occurred at a firearms show. Because it may increase the instances in which individuals could make a false statement on a firearm consent form in violation of § 18.2-308.2:2(K), the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal. As a result, the magnitude of the impact on prison bed space needs cannot be quantified.

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

Adult community corrections resources. 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. Felony violations of § 18.2-308.2:2(K) are covered by the sentencing guidelines when this crime is the primary (most serious) offense. Felony convictions for selling, etc., a firearm to a person known to be prohibited from possessing or transporting firearms in violation of § 18.2-308.2:1 is covered by the sentencing guidelines when this crime is the primary, or most serious, offense in a case. Such a conviction, however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines is necessary under the proposal.

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

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

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

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 806 of the 2013 Acts of Assembly 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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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