



## Fiscal Impact Statement for Proposed Legislation

### *Virginia Criminal Sentencing Commission*

#### House Bill No. 1702

#### *Amendment in the Nature of a Substitute (Patron Prior to Substitute – DeSteph)*

**LD#:** 15105774

**Date:** 3/25/2015

**Topic:** Criminal history record checks for firearm transfers

#### **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\*\*

\*\*Provided by the Department of Juvenile Justice

\* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the 2014 Acts of Assembly, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

#### **Summary of Proposed Legislation:**

The proposal amends § 18.2-308.2:2 of the *Code of Virginia*, relating to firearm transfers. Currently, § 18.2-308.2:2 specifies mandatory procedures for dealers who sell, rent, trade, or transfer firearms from their inventories. The proposal would allow firearms dealers who are selling, etc., a firearm that is not part of their inventory to require prospective purchasers to consent to have the dealer obtain criminal history record information prior to completing the transfer. In addition, the bill directs the Department of State Police to establish policies and procedures for conducting such background checks.

The proposal also adds a provision to § 18.2-308.2:2 relating to purchases at firearms shows. As proposed, any party to a firearm transaction at a firearms show would have the option to ask the Department of State Police to determine if a prospective purchaser or transferee is prohibited from possessing a firearm. The proposal contains an enactment clause stating that this provision of the proposal would not become effective unless the Department of State Police receives approval to implement the proposed policies and procedures from the U.S. Department of Justice.

Currently, 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.

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**Analysis:**

Existing data sources do not contain sufficient detail to estimate the number of firearm transfers that would be affected by the proposal. However, individuals convicted of a felony for making a false statement on the consent form under the proposal may be sentenced similarly to those convicted under the existing provisions of § 18.2-308.2:2(K). According to fiscal year (FY) 2013 and FY2014 Sentencing Guidelines data, there were 135 felony convictions under § 18.2-308.2:2(K) for making false statements on the criminal history consent form. This offense was the primary, or most serious, offense in 130 of the cases. The majority (70.8%) of these offenders did not receive an active term of incarceration to serve after sentencing. Nearly one-fourth (23.1%) of the offenders received a local-responsible (jail) term, for which the median sentence was six months. The remaining 6.1% were sentenced to a state-responsible (prison) term. For offenders committed to prison, the median sentence length was 1.25 years.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Because it expands the circumstances in which an individual may submit a criminal history consent form, the proposal may result in additional felony convictions for making a false statement on the form. In this way, 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 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 affected cannot be determined, the potential impact on community corrections cannot be quantified.

**Virginia's sentencing guidelines.** Felony convictions under § 18.2-308.2:2(K) are covered by the current sentencing guidelines when this crime is the primary, or most serious, offense in a case. No adjustment to the guidelines would be necessary under the proposal.

**Juvenile correctional centers.** According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional center (JCC) 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, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the 2014 Acts of Assembly, 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.**