



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 425 (Patrons – Simon et al.)

LD#: 16101347

Date: 1/3/2016

Topic: Unlawful transfer of firearms

#### 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 665 of the 2015 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

#### Summary of Proposed Legislation:

The proposal adds § 18.2-308.1:6 to the *Code of Virginia* to make it a Class 1 misdemeanor for any person who knows, or has reason to know, that he is in the federal Terrorist Screening Database to purchase, possess, or transport a firearm. The proposed modifications to § 18.2-308.09 would disqualify any person in the federal Terrorist Screening Database from obtaining a concealed handgun permit.

The proposed amendments to § 18.2-308.2:1 would make it a Class 4 felony for any person to sell, barter, give, furnish, or possesses with the intent to sell, etc., a firearm to an individual whom he knows is prohibited from possessing or transporting a firearm because the individual is in the federal Terrorist Screening Database. 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.

Finally, the proposal expands requirements relating to criminal history record checks for firearms purchases to include checks to ensure that potential gun buyers are not in the Terrorist Screening Database. Firearms dealers also would be prohibited from employing any person who is in the Terrorist Screening Database. The proposal includes an enactment clause specifying that the proposed provisions will become effective only if the State Police receives approval from the U.S. Department of Justice to implement the policies and procedures set out in the act.

Currently, under § 18.2-308.2:2 (L), it is a Class 6 felony for any firearms dealer to willfully and intentionally sell, rent, trade, or transfer a firearm in violation of this section. Under § 18.2-308.2:2(M), purchasing a firearm with the intent to transfer it to an individual who is ineligible to purchase a firearm

from a dealer is a Class 4 felony that carries a mandatory minimum term of one year. Offenders who transfer more than one firearm in violation of § 18.2-308.2:2(M) are subject to a mandatory minimum term of five years. Subsection N of § 18.2-308.2:2 makes it a Class 4 felony for any person ineligible to purchase or possess a firearm to solicit, employ, or assist any person in purchasing a firearm in violation of § 18.2-308.2:2(M); a violation of this subsection also carries a mandatory minimum term of five years. It is a Class 2 misdemeanor under § 18.2-308.2:2(F) for dealers to obtain criminal history information under false pretenses or to unlawfully disseminate such information.

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**Analysis:**

Available data do not contain sufficient detail to determine the number of incidents that would be affected by the proposal. However, affected offenders may be sentenced similarly to those who are currently convicted under existing provisions (see table below).

**Offenders Convicted of Select Felony Firearm Offenses FY2014-FY2015**

<b>Primary Offense</b>	<b>Total Number of Cases</b>	<b>Percent Sentenced to Probation</b>	<b>Percent Sentenced to Jail</b>	<b>Median Jail Sentence</b>	<b>Percent Sentenced to Prison</b>	<b>Median Prison Sentence</b>
Sell, give, etc., firearm to ineligible person (§ 18.2-308.2:1)	8	N/A	87.5%	6 months	12.5%	3 years
Dealer sell/transfer firearm in violation of section (§ 18.2-308.2:2(L))	0	N/A	N/A	N/A	N/A	N/A
Solicit, etc., dealer to transfer firearm to another (§ 18.2-308.2:2(L1))	1	0%	0%	N/A	100%	2 years
Provide > 1 firearm to ineligible person (§ 18.2-308.2:2(M))	0	N/A	N/A	N/A	N/A	N/A
Purchase firearm to provide to ineligible person (§ 18.2-308.2:2(M,i))	4	25%	25%	2 months	50%	4 years
Transport firearm out of state to provide to ineligible person (§ 18.2-308.2:2(M,ii))	0	N/A	N/A	N/A	N/A	N/A
Solicit violation of § 18.2-308.2:2(M) (§ 18.2-308.2:2(N))	1	0%	0%	N/A	100%	3 years
False statement on affidavit (§ 18.2-308.2:3(C,1))	0	N/A	N/A	N/A	N/A	N/A
False statement on required personal descriptive information (§ 18.2-308.2:3(J))	1	100%	0%	N/A	0%	N/A

Note: The analysis is based on cases in which the specified offense was the primary, or most serious, offense in the sentencing event.

Sources: Supreme Court of Virginia - Circuit Court Case Management System (CMS), FY2014-FY2015 and Virginia Criminal Sentencing Commission - Sentencing Guidelines Database, FY2014-FY2015

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Because it expands existing felony offenses, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, 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. Felony convictions under the other affected sections of the *Code* are not covered by the sentencing guidelines as the primary, or most serious, offense. 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 (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 665 of the 2015 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**