



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 1049 (Patron – Edwards)

LD#: 17101615

Date: 1/9/2017

Topic: Temporary detention orders; criminal history record checks

#### Fiscal Impact Summary:

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

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

\*\*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 780 of the 2016 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

#### Summary of Proposed Legislation:

The proposal amends several sections of the *Code of Virginia* relating to firearms. Currently, under § 18.2-308.1:3, it is unlawful for a person to purchase, possess, or transport a firearm if that person has ever been (i) involuntarily admitted to a facility or ordered to mandatory treatment under one of the specified *Code* sections or (ii) the subject of a temporary detention order (TDO) pursuant to § 37.2-809 and subsequently agreed to voluntary admission pursuant to § 37.2-805. The consent form required to purchase a firearm from a firearms dealer currently includes a question asking whether or not the applicant has been involuntarily admitted to a facility or ordered to mental health treatment and is therefore prohibited from purchasing a firearm under § 18.2-308.1:3. Under the proposal, the consent form would be expanded to include a question to determine if the applicant has ever been the subject of a TDO and agreed to voluntary admission to treatment. Making a materially false statement on the consent form is a Class 5 felony under § 18.2-308.2:2(K). Any dealer who willfully and intentionally sells or transfers a firearm in violation of § 18.2-308.2:2 is guilty of a Class 6 felony under § 18.2-308.2:2(L). The proposal would also modify certain procedures for obtaining criminal history records checks under § 18.2-308.2:2.

Currently, under § 18.2-295, it is a Class 3 misdemeanor to fail to give required notifications to the Department of State Police when transferring a registered machine gun. The proposal would expand the required notifications to include when any registrant changes address.

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**Analysis:**

According to fiscal year (FY) 2015 and FY2016 Sentencing Guidelines data, there were 175 felony convictions under § 18.2-308.2:2(K) for making false statements on the consent form. This was the primary, or most serious, offense in 166 of the cases. The majority (75.3%) of these offenders did not receive an active term of incarceration to serve after sentencing. Another 18.7% of the offenders received a local-responsible (jail) term with a median sentence of seven months. The remaining 6% were given a state-responsible (prison) term; for offenders committed to prison, the median sentence was 1.4 years.

Based on Circuit Court Case Management System (CMS) data for FY2015 and FY2016, no dealers were convicted under § 18.2-308.2:2(L) for unlawfully selling or transferring a firearm.

General District Court CMS data for FY2015 and FY2016 indicate that there were no convictions under § 18.2-295 for failure to give required notification related to transferring a registered machine gun.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By expanding the information that must be reported on the consent form for firearm purchases, the proposal may increase the instances in which individuals make a false statement on the form in violation of § 18.2-308.2:2(K). In this way, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Existing data sources do not contain sufficient detail to estimate the number of additional felony convictions that may result from enactment of the proposal. Therefore, the magnitude of the impact on prison bed space needs cannot be determined.

**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.** Violations of § 18.2-308.2:2(K) are covered by the sentencing guidelines. Convictions under § 18.2-308.2:2(L) are not covered by the guidelines when the offense is the primary, or most serious, offense in a case; however, a conviction under this provision 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 direct care.** According to the Department of Juvenile Justice (DJJ), the proposal will not increase direct care (juvenile correctional center or alternative commitment placement) bed space needs.

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

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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 780 of the 2016 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.**