



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1443 (Patron – Barker)

LD#: 17103859

Date: 1/10/2017

Topic: Possession of firearms by certain individuals

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:**
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 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 adds § 19.2-60.2 to the *Code of Virginia*, relating to the removal of firearms from persons posing a substantial risk of personal injury to themselves or others. The proposal establishes a procedure by which any attorney for the Commonwealth or law enforcement officer may request that a warrant be issued allowing for the removal of a firearm from certain individuals. Under the proposal, if a judge finds probable cause to believe that (i) a person poses a substantial risk of personal injury to himself or others in the near future, (ii) the person possesses one or more firearms, and (iii) such firearms are within or upon any place, thing or person, the judge may issue a warrant to search the place, etc., and remove the firearm. The proposal also specifies factors that judges may consider in determining whether an individual poses a risk to himself or others in the near future; these include prior arrests for a violent felony offense listed in § 17.1-805, a prior violation of a protective order, and the illegal use of controlled substances or abuse of alcohol by the individual.

In addition, the proposed § 19.2-60.2 establishes a procedure for the circuit court to determine whether any firearm taken should be returned to the person named in the warrant or if it should continue to be held by the agency that took the firearm. If the court finds that the person poses a risk of personal injury to himself or others in the near future, the court may order that the firearm should continue to be held for a certain period of time.

The proposal also expands the applicability of several existing felony offenses to include offenders who have been served with a warrant or who are subject to an order pursuant to the proposed § 19.2-60.2. Under the proposed modifications to § 18.2-308.2:1, for instance, individuals who sell, barter, give, or furnish a firearm

to a person who is subject to a warrant or order issued under § 19.2-60.2 would be guilty of a Class 4 felony. Also, additional individuals would be ineligible to receive a firearm from a licensed firearms dealer. Currently, 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 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.

Under § 18.2-308.2:2(K), 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. The proposal would amend the Virginia consent form to add a question regarding whether the applicant has been served with a warrant or is subject to an order pursuant to § 19.2-60.2.

Analysis:

Existing data sources do not contain sufficient detail to predict how many cases would be affected by expanding certain felony offenses to apply to additional circumstances. However, affected offenders may be sentenced similarly to those who are currently convicted of a felony under the existing provisions (see table below). Offenders convicted of the proposed Class 1 misdemeanor who accumulate three or more firearm convictions could be found guilty of a Class 6 felony under § 18.2-311.2. A review of FY2011-FY2016 Circuit Court CMS data for all felony convictions under § 18.2-311.2 resulting from a third or subsequent misdemeanor firearms violation revealed that, during the six-year period, none of the offenders received a state-responsible (prison) sentence.

Offenders Convicted of Select Felony Firearm Offenses, FY2015-FY2016

| Primary Offense | Total Number of Cases | Percent Sentenced to Probation | Percent Sentenced to Jail | Median Jail Sentence | Percent Sentenced to Prison | Median Prison Sentence |
|---|--------------------------------------|---|--|-------------------------------------|--|---------------------------------------|
| Sell, give, etc., firearm to ineligible person (§ 18.2-308.2:1) | 4 | 50.0% | 25.0% | 6 months | 25.0% | 3 years |
| False statement on firearm consent form (§ 18.2-308.2:2(K)) | 166 | 75.3% | 18.7% | 7 months | 6.0% | 1.4 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)) | 0 | N/A | N/A | N/A | N/A | N/A |
| 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)) | 2 | 50% | 0% | N/A | 50% | 1 year |
| 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 |

Offenders Convicted of Select Felony Firearm Offenses, FY2015-FY2016 (continued)

| Primary Offense | Total Number of Cases | Percent Sentenced to Probation | Percent Sentenced to Jail | Median Jail Sentence | Percent Sentenced to Prison | Median Prison Sentence |
|---|--------------------------------------|---|--|-------------------------------------|--|---------------------------------------|
| Solicit violation of § 18.2-308.2:2(M) (§ 18.2-308.2:2(N)) | 0 | N/A | N/A | N/A | N/A | N/A |
| 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)) | 0 | N/A | N/A | N/A | N/A | 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), FY2015-FY2016 and Virginia Criminal Sentencing Commission - Sentencing Guidelines Database, FY2015-FY2016

Impact of Proposed Legislation:

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

Local adult correctional facilities. Similarly, the proposal may also increase local-responsible (jail) bed space needs. Because the number of new convictions that may result from enactment of the proposal cannot be determined, the magnitude of the impact on jail bed space needs cannot be estimated.

Adult community corrections programs. 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 that may be affected cannot be determined, the potential impact on community corrections 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 when the offense 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 direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) 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.

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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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