



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1100 (Patron – Levine)

LD#: 18103581

Date: 12/22/2017

Topic: Possession of firearms by person involuntarily admitted

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **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

Summary of Proposed Legislation:

The proposal amends § 37.2-821 regarding the appeal of involuntary admission or certification orders. Currently, under § 18.2-308.1:3, it is unlawful for any 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. A violation is punishable as a Class 1 misdemeanor. Furthermore, per § 18.2-311.2, a third or subsequent Class 1 misdemeanor weapons violation (defined in Article 4, 5, 6, or 7 of Chapter 7 of Title 18.2) is punishable as a Class 6 felony.

Under § 37.2-821, an individual has the right to appeal the order to the circuit court in the jurisdiction where he was involuntarily admitted or ordered to mandatory outpatient treatment or certified or where the facility to which he was admitted is located. The appeal shall be heard de novo and, upon the grant of relief by the court, the provisions of § 18.2-308.1:3 do not apply.

Under the proposal, regardless of whether the court finds that the criteria in § 37.2-817 (relating to involuntary admission and mandatory outpatient treatment orders) are met at the time the appeal is heard, the appealed order entered by the district court judge or special justice pursuant to § 37.2-817 acts as an adjudication that the person was involuntarily admitted or ordered to mandatory outpatient treatment for the purposes of § 18.2-308.1:3 until such time as the person's right to purchase, possess, or transport a firearm is restored pursuant to § 18.2-308.1:3. Essentially, under the proposal, the original commitment order would be sufficient for purposes of restricting the person's right to purchase possess, or transport a firearm under § 18.2-308.1:3.

Analysis:

Existing databases do not provide sufficient detail to identify the number of new convictions likely to result from enactment of the proposal.

General District Court CMS data for FY2016 and FY2017 indicate that 134 offenders were convicted of a Class 1 misdemeanor under § 18.2-308.1:3. The majority of these offenders (84.3%) did not receive an active term of incarceration to serve after sentencing. The remaining 15.7% received a local-responsible (jail) term for which the median sentence was two months.

Individuals convicted of the affected Class 1 misdemeanor who accumulate three or more weapon convictions could be found guilty of a Class 6 felony under § 18.2-311.2. According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2012 through FY2017, five offenders were convicted of a felony under § 18.2-311.2 for a third or subsequent weapon offense. The felony violation of § 18.2-311.2 was the primary, or most serious, offense in four of the cases. None of these offenders received an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. Although offenders convicted of a Class 1 misdemeanor under the proposal could, in the future, be convicted of a Class 6 felony under § 18.2-311.2 if they accumulate three or more weapon convictions, available data reveal that, in the six most recent fiscal years, no offender convicted of a felony under § 18.2-311.2 has received a state-responsible (prison) sentence. Therefore, the proposal is not expected to have an impact on the state-responsible (prison) bed space needs of the Commonwealth during the six-year window specified by § 30-19.1:4 for legislative impact statements.

Local adult correctional facilities. Existing data sources do not contain sufficient detail to determine the impact of the proposal on local-responsible (jail) bed space needs. Therefore, the magnitude of the impact cannot be quantified.

Adult community corrections programs. The proposal could result in convictions and subsequent supervision requirements for an additional number of offenders, which may increase the need for local and/or state community corrections resources. The number of new convictions likely to result from the proposal cannot be determined; therefore, the potential impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. Felony convictions under § 18.2-311.2 are not covered by the sentencing guidelines when this crime is the primary, or most serious, offense in a case. However, a conviction for this offense could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be 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 is \$0 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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