



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1143 (Patron – Convirs-Fowler)

LD#: 18101635

Date: 12/8/2017

Topic: 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 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 836 of the 2017 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 § 18.2-308.2:2 and adds several sections to the *Code of Virginia* to expand requirements relating to the transfer of handguns. Under the proposal, any person other than a firearms dealer who transfers a handgun must first require the prospective transferee to present a handgun transfer permit and proper identification. The proposal specifies procedures for the Virginia State Police to issue handgun transfer permits to Virginia residents. These procedures require individuals to submit an application made under oath before a notary or other person qualified to take oaths. The applicant must also consent to a criminal history record check to determine that the applicant is not prohibited from possessing a firearm under state or federal law. Essentially, the proposal expands requirements relating to criminal history record checks for handgun purchases to include additional types of transfers, such as gun shows and private transfers. However, the handgun transfer permit could also be used when purchasing handguns from dealers. The proposal requires the State Police to run periodic criminal history records checks on handgun transfer permit holders and authorizes the State Police to suspend or revoke permits. Any person using a suspended or revoked permit would be guilty of a Class 1 misdemeanor. The proposal sets out specific exceptions to the proposed requirements.

As proposed, any person who transfers a handgun without requiring the transferee to present a handgun transfer permit and proper identification would be guilty of a Class 1 misdemeanor. Pursuant to § 18.2-311.2, a third or subsequent Class 1 misdemeanor weapon violation (defined in Article 4, 5, 6, or 7 of Chapter 7 of Title 18.2) is punishable as a Class 6 felony. To obtain a handgun transfer permit, the proposal requires individuals to submit an application made under oath; making a materially false

statement on this application would constitute perjury under § 18.2-434, which is punishable as a Class 5 felony.

Analysis:

Existing data sources do not contain sufficient detail to estimate the number of handgun transfers that would be affected by the proposal or how many additional misdemeanor or felony convictions may result. However, individuals convicted of a felony for falsely swearing an oath on the application required by the proposal may be sentenced similarly to those currently convicted of perjury under § 18.2-434.

Sentencing Guidelines data for fiscal year (FY) 2016 and FY2017 indicate that 66 offenders were convicted of a Class 5 felony for falsely swearing an oath under § 18.2-434. The perjury offense was the primary, or most serious, offense at sentencing in 45 of the cases. Nearly half (44.4%) of these offenders did not receive an active term of incarceration to serve after sentencing. Another 44.4% of the offenders were given a local-responsible (jail) term, for which the median sentence was six months. The remaining 11.2% received a state-responsible (prison) term with a median sentence of two years.

Offenders convicted of the proposed Class 1 misdemeanor who accumulate three or more weapon convictions could be found guilty of a Class 6 felony under § 18.2-311.2. A review of FY2012-FY2017 Circuit Court Case Management System data for all felony convictions resulting from a third or subsequent misdemeanor weapon violation revealed that, during the six-year period, five offenders were convicted of such a felony. The felony violation of § 18.2-311.2 was the primary, or most serious, offense in four of the cases. However, none of these offenders received a state-responsible (prison) sentence.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal expands the applicability of perjury (a Class 5 felony) to include instances in which a person falsely swears an oath on an application required for a handgun transfer permit. Because additional felony convictions may result, 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. By expanding the applicability of an existing felony and creating new misdemeanor offenses, the proposal may increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be determined.

Adult community corrections programs. Since the proposal could result in convictions and subsequent supervision requirements for an additional number of offenders, it may increase the need for adult community corrections resources. Because the number of cases affected cannot be determined, the potential impact on community corrections cannot be quantified.

Virginia's sentencing guidelines. Felony convictions for perjury under § 18.2-434 are covered by the current sentencing guidelines. The guidelines do not cover felony violations under § 18.2-311.2 as the primary, or most serious, offense; however, convictions under this provision may 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 cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 836 of the 2017 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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