



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 18 (Patron – Saslaw)

LD#: 20100508

Date: 11/14/2019

Topic: Age requirement for firearm transfers

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 854 of the 2019 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* and adds § 18.2-308.2:5, relating to the age requirement for the transfer of firearms. Currently, federal law requires that a person be at least 18 years of age to purchase a rifle or shotgun and at least age 21 to purchase a handgun from a licensed firearms dealer.¹ Under the proposal, a person must be age 21 or older, or must have attained the age of 18 by July 1, 2020, to purchase any firearm from a licensed dealer.

The proposal also specifies that any person who transfers a firearm must first obtain verification from a licensed firearms dealer that a prospective purchaser is not prohibited from possessing a firearm under state or federal law. Essentially, the proposal expands requirements relating to criminal history record checks for firearms purchases to include additional types of transfers, such as gun shows and private transfers. In addition, the proposal sets out specific exceptions to these verification requirements.

Under the proposal, any person who transfers a firearm without first obtaining proper verification 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. The proposal states that the definitions and provisions of § 18.2-308.2:2 regarding criminal history record checks would apply to the proposed § 18.2-308.2:5. Currently, under § 18.2-308.2:2(K), making a materially false statement on the criminal history consent form is a Class 5 felony. Pursuant to

¹ Retrieved from <http://www.vsp.virginia.gov/Firearms.shtm#FAQ> (November 14, 2019).

§ 18.2-308.2:2, only licensed firearms dealers currently must obtain verification on prospective purchasers prior to selling or transferring a firearm.

In addition, the bill raises the age at which a person may possess or transport a handgun or assault firearm from 18 to 21 (§ 18.2-308.7). Violation of this offense is a Class 1 misdemeanor.

Finally, the proposal increases the penalty for recklessly leaving a loaded, unsecured firearm so as to endanger a child under age 14 from a Class 3 misdemeanor to a Class 6 felony, while also expanding the provision to cover any child under age 18 (§ 18.2-56.2(A)). Under the proposed § 18.2-56.2(B), it is a Class 1 misdemeanor for an adult to authorize a child under the age of 18 to use a firearm except under adult supervision (currently an adult may not authorize a child under the age of 12 to use a firearm without supervision).

Analysis:

Existing data sources do not contain sufficient detail to estimate the number of additional misdemeanor and felony convictions that may result from the proposal.

Offenders convicted of the proposed Class 1 misdemeanor for unlawfully transferring a firearm, as well as offenders affected by the proposed expansion of Class 1 misdemeanors in § 18.2-308.7 and § 18.2-56.2(B), who later accumulate three or more misdemeanor firearm convictions could be found guilty of a Class 6 felony under § 18.2-311.2. A review of fiscal year (FY) 2014-FY2019 Circuit Court Case Management System (CMS) data revealed that, during the six-year period, no offenders received a state-responsible (prison) term for a third or subsequent misdemeanor firearm violation.

Individuals convicted of a felony for making a false statement on the criminal history consent form under the proposed requirements may be sentenced similarly to those convicted under the existing provisions of § 18.2-308.2:2(K). According to FY2018-FY2019 Sentencing Guidelines data, 227 offenders were convicted under § 18.2-308.2:2(K) for making false statements on the consent form (as the primary, or most serious, offense at sentencing). The majority (79.3%) did not receive an active term of incarceration to serve after sentencing. Another 15.9% of the offenders received a local-responsible (jail) term for which the median sentence was six months. The remaining 4.8% were sentenced to a state-responsible (prison) term with a median sentence of 1.5 years.

According to General District Court and Juvenile & Domestic Relations Court Case Management System (CMS) data, during FY2018-FY2019, ten offenders were convicted of a Class 3 misdemeanor under § 18.2-56.2(A) for recklessly leaving a loaded, unsecured firearm so as to endanger a child under age 14 (offenders who were also convicted of other more serious charges were excluded). If the proposal were enacted, offenders convicted of the new Class 6 felony under § 18.2-56.2(A) may be sentenced similarly to those currently convicted of a Class 6 felony under § 18.2-371(B) for gross, wanton or reckless care of a child. According to FY2018-FY2019 Sentencing Guidelines data, nearly half of the offenders (46.4%) convicted under § 18.2-371(B) received a local-responsible (jail) term with a median sentence of four months. Another 12.4% received a state-responsible (prison) term for which the median sentence was approximately 1.4 years. The remaining 41.2% of the offenders did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. Offenders convicted of the proposed or expanded Class 1 misdemeanor offenses could, in the future, be convicted of a Class 6 felony under § 18.2-311.2 if they accumulate three or more misdemeanor firearm convictions. In the six most recent fiscal years, however, no offender convicted of a felony under § 18.2-311.2 has received a state-responsible (prison) sentence. Therefore, this portion of 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.

However, because it raises a misdemeanor to a felony and expands the applicability of an existing felony, the proposal may result in additional felony convictions, and offenders sentenced to serve prison terms, under those provisions. Existing databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal. Therefore, 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 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. Felony convictions under § 18.2-308.2:2(K) are covered by the current sentencing guidelines. No adjustment to the guidelines would be necessary under the proposal. Felony convictions under § 18.2-311.2 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.

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 854 of the 2019 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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