



## Fiscal Impact Statement for Proposed Legislation

*Virginia Criminal Sentencing Commission*

### Senate Bill No. 70 (*Patron – Lucas*)

**LD#:** 20101549

**Date:** 11/26/2019

**Topic:** Criminal history checks 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 of Virginia* and adds § 18.2-308.2:5 to expand criminal history record information check requirements for firearm transactions. The proposal also contains technical amendments.

Currently, pursuant to § 18.2-308.2:2, only licensed firearms dealers must obtain verification on purchasers prior to selling or transferring a firearm. Moreover, existing § 54.1-4201.2 includes voluntary background checks for firearm transfers by private vendors (i.e., other than licensed firearm dealers) at gun shows. Under the proposed § 18.2-308.2:2, a criminal history record information check would be required for all firearms sales and transfers. No transfer other than those explicitly exempted<sup>1</sup> can take place unless a designated licensed dealer, in a process defined by § 18.2-308.2:5, verifies through the Department of State Police that the prospective purchaser is not prohibited from possessing a firearm. Under the proposal, it would be a Class 6 felony for anyone to sell, rent, trade, or transfer a firearm without obtaining verification from a designated licensed dealer. Furthermore, under the proposed, anyone who receives a firearm from another person without obtaining the required verification would be guilty of a Class 1 misdemeanor.

<sup>1</sup> Includes gifts to immediate family, property inherited from a will, emergency situations of imminent threat, and temporary target practice/sport shooting with the owner present.

In addition, the proposal would expand requirements relating to record checks for firearm purchases by adding a question on the state's form asking if the prospective buyer has been the subject of a temporary detention order under § 37.2-809 and subsequently agreed to a voluntary admission pursuant to § 37.2-805. A proposed amendment to § 18.2-308.2:2(B.2) extends the delay period—from the next business day to the third business day—for licensed dealers to complete transfers in which the record check is pending State Police response. The proposed § 18.2-308.2:2(C) outlines eligibility and identification requirements for dual residents of Virginia and another state to engage in legal firearm transfers.

In effect, the proposal would expand the applicability of several existing offenses. It is a Class 2 misdemeanor under § 18.2-308.2:2(F) for dealers to obtain criminal history information under false pretenses or to unlawfully disseminate such information. 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. Under § 18.2-308.2:2 (L), it is a Class 6 felony for any firearms dealer to willfully and intentionally sell, rent, trade, or transfer a firearm in violation of the provision. Pursuant to § 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 for any person ineligible to purchase or possess a firearm 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.

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#### **Analysis:**

Offenders convicted of the proposed Class 1 firearm 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 fiscal year (FY) 2014 through FY2019 Circuit Court Case Management System (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.

Existing data sources do not contain sufficient detail to estimate the number of firearm transfers that would require completion of a criminal history background check under the proposal or how many additional misdemeanor or felony convictions may result. However, individuals convicted of a felony under the proposed requirements may be sentenced similarly to those convicted under the existing provisions of § 18.2-308.2:2 (see table below).

#### **Offenders Convicted of Select Felony Firearm Offenses, FY2018-FY2019**

| Primary Offense   | Total Number of Cases | Percent Sentenced to Probation | Percent Sentenced to Jail | Median Jail Sentence | Percent Sentenced to Prison | Median Prison Sentence |
|---|-----------------------|--------------------------------|---------------------------|----------------------|-----------------------------|------------------------|
| False statement on firearm consent form<br>§ 18.2-308.2:2(K))               | 224                   | 79%                            | 16.1%                     | 6 months             | 4.9%                        | 1.6 years              |
| Dealer sell/transfer firearm in violation of section<br>§ 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<br>§ 18.2-308.2:2(L1)) | 2                     | 50%                            | N/A                       | N/A                  | 50%                         | 1.0 year               |
| Purchase firearm to provide to ineligible person                            | 3                     | 100%                           | N/A                       | N/A                  | N/A                         | N/A                    |

| (§ 18.2-308.2:2(M,i))  |   |       |     |     |       |           |
|--|---|-------|-----|-----|-------|-----------|
| Transport firearm out of state to provide to ineligible person<br>(§ 18.2-308.2:2(M,ii)) | 0 | N/A   | N/A | N/A | N/A   | N/A       |
| Solicit violation of § 18.2-308.2:2(M)<br>(§ 18.2-308.2:2(N))                            | 3 | 33.3% | N/A | N/A | 66.7% | 6.8 years |

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), FY2018-FY2019 and Virginia Criminal Sentencing Commission - Sentencing Guidelines Database, FY2018-FY2019.

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### Impact of Proposed Legislation:

**State adult correctional facilities.** Offenders convicted of the proposed Class 1 misdemeanor offense under § 18.2-308.1:6 could, in the future, be convicted of a Class 6 felony under § 18.2-311.2 if they accumulate three or more 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.

Because it establishes a new Class 6 felony and expands existing felony offenses, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, 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.** 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 (except subsection K) under § 18.2-308.2:2 and the proposed § 18.2-308.2:5 are not covered by the sentencing guidelines when one of these offenses is the primary, or most serious, 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 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.

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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 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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