



## Fiscal Impact Statement for Proposed Legislation

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### Virginia Criminal Sentencing Commission

#### House Bill No. 2407 (Patron – Williams Graves)

LD#: 23103702

Date: 01/017/2023

Topic: Purchase of firearms; completion of firearms safety course

#### 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 2 of the Acts of Assembly of 2022, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

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#### Summary of Proposed Legislation:

The proposal amends § 18.2-308.2:2 to require a prospective purchaser of a firearm to present proof that he or she has demonstrated competence with a firearm or completed a firearms safety or training course within the past five years before he or she is allowed to purchase a firearm from a licensed dealer.

Currently, under § 18.2-308.2:2, proof of competency or safety training is not required to purchase a firearm from a licensed firearm dealer; however, prospective buyers must complete a criminal record check consent form and, except under limited circumstances, a dealer may not complete the transaction until he has received notification from the Virginia State Police that the prospective buyer is not prohibited from possessing a firearm. Under the proposal, the existing requirements for a criminal record check would continue with addition of the requirement for presenting proof of competency or safety training. Misdemeanor and felony offenses currently defined in § 18.2-308.2:2 would remain unchanged.

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.

The proposal also amends § 18.2-308.2:5 to require private firearm sellers to receive from a prospective purchaser proof that he or she has demonstrated competence with a firearm or completed a firearms safety or training course within the past five years. Violation of § 18.2-308.2:5 is 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.

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### Analysis:

Existing data sources do not contain sufficient detail to estimate the number of additional misdemeanor or felony convictions may result if the proposal were enacted. However, individuals convicted of a felony as a result of 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, FY2021-FY2022**

<b>Primary Offense</b>	<b>Total Number of Cases</b>	<b>Percent Sentenced to Probation</b>	<b>Percent Sentenced to Jail</b>	<b>Median Jail Sentence</b>	<b>Percent Sentenced to Prison</b>	<b>Median Prison Sentence</b>
False statement on firearm consent form (§ 18.2-308.2:2(K)) <sup>1</sup>	222	80.2%	16.2%	6 months	3.6%	1 year
Dealer sell/transfer firearm in violation of section (§ 18.2-308.2:2(L)) <sup>2</sup>	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)) <sup>2</sup>	2	100%	N/A	N/A	N/A	N/A
Purchase firearm to provide to ineligible person (§ 18.2-308.2:2(M,i)) <sup>2</sup>	1	0%	0%	N/A	100%	1 year
Transport firearm out of state to provide to ineligible person (§ 18.2-308.2:2(M,ii)) <sup>2</sup>	0	N/A	N/A	N/A	N/A	N/A
Solicit violation of § 18.2-308.2:2(M) (§ 18.2-308.2:2(N)) <sup>2</sup>	1	0%	0%	N/A	100%	9.6 years

Note: Analysis is based on cases in which the specified offense was the primary, or most serious, offense in the sentencing event.

Sources: <sup>1</sup> Virginia Criminal Sentencing Commission - Sentencing Guidelines Database

<sup>2</sup> Supreme Court of Virginia - Circuit Court Case Management System (CMS), as analyzed by the Sentencing Commission

According to General District Court CMS data for the same six-year time period, 13 offenders were convicted of a Class 1 misdemeanor for selling or purchasing a firearm without the required criminal history record check under § 18.2-308.2:5. Of these, 23.1% were sentenced to local-responsible (jail) terms with a median sentence of three months. The remaining offenders (76.9%) did not receive an active term of incarceration to serve after sentencing.

Offenders convicted of any of the proposed Class 1 firearm misdemeanors 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) data for fiscal year (FY) 2017 through FY2022, three 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 for only one of these offenders. This offender received a state-responsible (prison) sentence of 1.3 years.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposal adds requirements for purchasing firearms that could potentially result in more felony violations of § 18.2-308.2:2. In addition, offenders convicted of any of the proposed 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 weapon convictions. 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.** By expanding the applicability of existing offenses, 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 the affected statutes (except subsection K of § 18.2-308.2:2) are not covered by the Sentencing Guidelines when these offenses are the primary, or most serious, offense in a case. Such convictions, however, could augment the Guidelines recommendation (as additional offenses) 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 2 of the Acts of Assembly of 2022, Special Session I, 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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