



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 698

(Patron – Marsh)

Date Submitted: 10/29/02

LD #: 03-0605460

Topic: Criminal history record checks to obtain firearm from a gun show vendor

Proposed Change:

This proposal amends §54.1-4200 and adds §§18.2-308.2:4 and 54.1-4201.2 to establish requirements for criminal history record checks for persons purchasing guns at firearms shows. Changes to §54.1-4200 clarify the definition of a “firearms show” by explicitly including the parking areas of such premises and by specifying a minimum number of firearms to be exchanged in order to qualify as a show (25 or more). Definitions of a “firearms show vendor” and a “promoter” are added to §54.1-4200. The proposed §54.1-4201.2 specifies the duties of a gun show promoter to include 1) requiring participating gun show vendors to present photo identification, 2) maintaining identifying information on participating vendors, 3) providing notice to vendors regarding the requirements for criminal history checks for gun purchasers, 4) making available to vendors one or more licensed gun dealers to conduct the criminal information checks during the show as prescribed, and 5) posting in a prominent location at the firearms show a notice of the requirement for a criminal history check to purchase a gun.

The proposed §18.2-308.2:4 establishes a Class 2 misdemeanor for intentionally requesting or seeking to obtain criminal record information under false pretenses or intentionally disseminating such information except as authorized by law, as well as a Class 5 felony for making a materially false statement on the criminal history form while at a gun show and a Class 6 felony for intentionally transferring a gun at a firearms show in violation of the proposed provisions.

Currently, the responsibilities of gun show promoters are prescribed in §54.1-4201.1, and are limited to maintaining a list of vendors and other exhibitors that must be transmitted to the State Police and local law enforcement 72 hours prior to the show, as well as a similar list of those who actually transacted business within 72 hours after the show. Willful violation is currently punishable as a Class 3 misdemeanor.

Although current law does not explicitly identify firearm show vendors, the proposal largely parallels §18.2-308.2:2 which requires criminal history record checks for transfers by licensed firearm dealers.

Current Practice:

According to the FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) database, 125 offenders were convicted in circuit court for violation of §18.2-308.2:2 and sentenced under no-parole provisions. Nearly all (99%) of the violations of §18.2-308.2:2 were due to an offender giving a false statement on the consent form. In these cases, 6% of the offenders received a state-responsible (prison) term, with a median sentence of 18 months (see *Background Sentencing Information* below). Terms of supervised probation ranged from none to an indefinite period, with a median term of no probation. Suspended sentences ranged from none to 30 years, with the median suspended sentence being one year.

The remaining felony case found in PSI (1%) involved a dealer who sold or transferred a firearm in violation of §18.2-308.2:2. That offender was not incarcerated, but had a three-year suspended sentence with no active supervision.

Based on fiscal year (FY) 2001 and 2002 Local Inmate Data System (LIDS) data, four offenders held pre- or post-trial in jail were convicted of a misdemeanor under §18.2-308.2:2 for obtaining criminal history record information under false pretenses. All were sentenced to a jail term with a median sentence of 10 days. There were no cases found of unauthorized dissemination of criminal history record information (§18.2-308.2:2). Likewise, no cases involving improper notification of a gun show by a promoter (§54.1-4201.1) were identified in LIDS data; however, as the maximum penalty for this offense is a fine, offenders charged with this crime would only appear in the LIDS data if there were a more serious accompanying offense.

Convictions under the proposed §§18.2-308.2:4 and 54.1-4201.2 would not be covered by the sentencing guidelines when the crime is the primary offense in a sentencing event but may augment the guidelines recommendation if a covered offense is the most serious at conviction.

Background Sentencing Information

§18.2-308.2:2 Felony Crimes	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median State-Responsible Sentence
False statement on criminal background check consent form	125	77%	17%	6%	1.5 yr.
Dealer unlawfully sells/transfers firearm	1		100%		Not applicable

Data Source: FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) database.

Impact of Proposed Legislation:

The bill proposes requirements and penalties that are not specifically defined in the *Code of Virginia*. No current criminal justice database maintains information about firearm show vendors; therefore, the number of violations of the proposed §18.2-308.2:4 that may arise from purchases or attempted purchases of firearms at gun shows (e.g., false statements on the consent form), as well as the number of violations by gun show promoters under the proposed §54.1-4201.1 cannot be determined. Although the proposal may increase the need for both state-responsible (prison) and local-responsible (jail) bed space, neither can be quantified.

Similarly, the program needs for both local and state community corrections may also increase under the proposal, but cannot be quantified with existing data. No adjustment to the sentencing guidelines would be necessary under the proposal.

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 and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.