



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 364

(Patron – McClellan)

LD#: 12100568

Date: 12/27/2011

Topic: Criminal history checks at firearm shows

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 890 of the 2011 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 § 54.1-4200 and § 54.1-4201.1 and adds § 18.2-308.2:4 and § 54.1-4201.2, relating to purchases at firearms shows. Under the proposed § 18.2-308.2:4, gun show vendors would be required to obtain verification from a licensed firearm dealer that a prospective purchaser is not prohibited from possessing a firearm under state or federal law.

The penalties proposed for firearms show vendors and their prospective buyers parallel existing penalties for licensed dealers and their prospective buyers. Making a materially false statement on a consent form required to purchase a firearm (as specified in § 18.2-308.2:2) is a Class 5 felony. Any person who willfully and intentionally sells, rents, trades, or transfers a firearm in violation of these provisions is guilty of a Class 6 felony. Willfully and intentionally requesting or obtaining criminal history information under false pretenses or unlawfully disseminating criminal history record information is a Class 2 misdemeanor.

In addition, the proposal modifies the definition of “firearms show,” under § 54.1-4200, to include the entire premises, including parking areas. The proposed amendment to § 54.1-4200 also defines the terms “firearms show vendor” and “promoter.” The proposed § 54.1-4201.2 outlines the duties of the promoter in verifying the identities of the vendors and providing each vendor with a notice of statutory obligations, as well as posting a notice at the firearms show that describes the requirement for a criminal history record check. This part of the proposal would also require promoters to make one or more licensed dealers available to firearms show vendors for the purpose of conducting criminal history checks on prospective buyers.

Analysis:

According to fiscal year (FY) 2010 and FY2011 Sentencing Guidelines (SG) data, there were 136 offenders convicted of a felony under § 18.2-308.2:2(K) for making a false statement on a firearm consent form. In 124 of the cases, the false statement was the primary, or most serious, offense. Of

these, nearly three-fourths (71%) of the offenders were sentenced to probation without an active term of incarceration. Roughly one-fourth (24%) of the offenders were sentenced to a local-responsible (jail) term with a median sentence was 6.0 months. The remaining 5% were sentenced to a state-responsible (prison) term, for which the median sentence was 1.2 years.

Examining FY2010 and FY2011 data from the Circuit Court Automated Information System (CAIS) did not reveal any Class 6 felony convictions under § 18.2-308.2:2(L) relating to dealers unlawfully selling or transferring firearms.

According to FY2010 and FY2011 General District Court CAIS data, there were three possible Class 2 misdemeanor convictions under § 18.2-308.2:2(F) for obtaining criminal history information under false pretenses or unlawfully disseminating criminal history information. Two of the offenders were sentenced to serve local-responsible (jail) terms of 20 days and 1.5 months, respectively. The remaining offender received probation without an active term of incarceration.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of existing felonies, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The number of additional felony convictions that may result from the proposal cannot be estimated; therefore, the impact of the proposal on prison bed space cannot be determined.

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 additional felony convictions and subsequent supervision requirements for some offenders, the proposal may increase the need for adult community corrections resources. The potential impact on community corrections programs, however, cannot be determined.

Virginia's sentencing guidelines. The guidelines cover convictions for making a false statement on a firearm consent form (§ 18.2-308.2:2(K)). The guidelines do not cover convictions relating to dealers unlawfully selling or transferring firearms (§ 18.2-308.2:2(L)) when this crime is the primary (or most serious) offense in a case; however, a conviction under this section (as an additional offense) 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 correctional centers. According to the Department of Juvenile Justice, the proposal is not expected to increase juvenile correctional center bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

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 890 of the 2011 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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.