



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 1281 (Patron – Deeds)

LD#: 13103270

Date: 01/04/2013

Topic: Criminal history record check required to transfer firearm

#### 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:**  
Cannot be determined
- **Juvenile Detention Facilities:**  
Cannot be determined

\* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

#### Summary of Proposed Legislation:

The proposal adds § 18.2-308.2:4, relating to criminal history record information checks for the transfer of firearms, to the *Code of Virginia*. Under the proposal, 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.

As under the existing § 18.2-308.2:2, making a materially false statement on a consent form required under the proposal would be a Class 5 felony. Also, as in § 18.2-308.2:2, selling, renting, trading, or transferring a firearm in violation of the proposed statute would be a Class 6 felony. However, this would only apply if the recipient is prohibited from possessing a firearm. This penalty would not apply in instances where a firearm is sold, etc., to an individual who is not prohibited from possessing a firearm but verification from a licensed dealer was not obtained.

In addition, willfully and intentionally requesting or obtaining criminal history information under false pretenses or unlawfully disseminating criminal history record information is a Class 2 misdemeanor under § 18.2-308.2:2(F) and the proposal.

#### Analysis:

Available data do not contain sufficient detail to determine the number of cases that would be affected by the proposal. However, affected offenders may be sentenced similarly to those who are currently convicted under §§ 18.2-308.2:2(K), 18.2-308.2:2(L), and 18.2-308.2:2(F).

According fiscal year (FY) 2011 and FY2012 Sentencing Guidelines Database data, there were 116 felony convictions under § 18.2-308.2:2(K) for providing false statements on a consent form. This offense was the primary, or most serious, offense in 107 of the cases. The majority (74.8%) of these offenders did not receive an active term of incarceration to serve after sentencing and 20.6% of the offenders were sentenced to a local-responsible (jail) term, for which the median sentence was five months. The remaining 4.7% were sentenced to a state-responsible (prison) term. For offenders committed to prison, the median sentence length was 1 year and 9 months.

The Circuit Court Case Management System (CCMS)<sup>1</sup> for FY2011 and FY2012 indicates that no offenders were convicted of a Class 6 felony under § 18.2-308.2:2(L) relating to dealers selling or transferring firearms in violation of § 18.2-308.2:2.

According to the General District Case Management System<sup>1</sup> data for FY2011 and FY2012, three individuals were convicted of a misdemeanor under § 18.2-308.2:2(F) for unlawfully disseminating criminal history information or obtaining criminal history information under false pretenses. While two of these offenders did not receive an active term of incarceration to serve after sentencing, the remaining offender was sentenced to a local-responsible (jail) term of 1.5 months.

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### **Impact of Proposed Legislation:**

**State adult correctional facilities.** Because it creates new felony offenses, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. 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 beds cannot be quantified.

**Local adult correctional facilities.** 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 an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

**Virginia's sentencing guidelines.** Because the proposal defines new felony offenses, convictions under the proposed section of the *Code* would not be 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. No adjustment to the guidelines is necessary under the proposal.

**Juvenile correctional centers.** The Department of Juvenile Justice reports that, while this proposal will cause an increase in commitments, the impact of this proposal on bed space needs for juvenile correctional centers cannot be determined.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that this proposal's impact on detention center bed space cannot be determined.

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<sup>1</sup> Formerly referred to as the Court Automated Information System (CAIS).

**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 3 of the Acts of the Assembly of 2012, 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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