Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1378

(Patrons – Garrett and Barker)

LD#: 13104694 **Date:** 1/29/2013

Topic: Illegal firearm transfers

Fiscal Impact Summary:

- **State Adult Correctional Facilities:** $46,773 (2 beds)
- **Local Adult Correctional Facilities:** $4,182 (less than 1 bed)
- **Adult Community Corrections Programs:** Cannot be determined
- **Juvenile Correctional Centers:** Cannot be determined
- **Juvenile Detention Facilities:** Cannot be determined

Summary of Proposed Legislation:

Currently, § 18.2-308.2:1 of the *Code of Virginia* makes it a Class 6 felony to sell, barter, give, or furnish a firearm to a person known to be prohibited from possessing or transporting firearms for certain reasons. The proposal increases the penalty for this offense from a Class 6 felony to a Class 4 felony.

Under § 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 is punishable as a Class 5 felony. Offenders who transfer more than one firearm in violation of § 18.2-308.2:2(M) are subject to a mandatory minimum of five years imprisonment. Under the proposal, any violation of § 18.2-308.2:2(M) would carry a mandatory minimum of one year and would be punishable as a Class 4. The existing five-year mandatory minimum would remain in effect for certain offenders.

Subsection N of § 18.2-308.2:2 makes it a Class 5 felony 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 is punishable as a Class 5 felony and carries a mandatory minimum term of five years. Under the proposal, the penalty for this offense would be increased to a Class 4 felony and, if the violation involves a transfer of more than one firearm, a ten-year mandatory minimum would apply.

Analysis:

According to the Circuit Court Case Management System (CCMS)[1] for fiscal years 2011 and 2012, 15 offenders were convicted of selling, bartering, giving, or furnishing a firearm to a person known to be prohibited from possessing or transporting a firearm under § 18.2-308.2:1. This charge was the primary, or most serious, offense in six of the cases. Five of the six offenders did not receive an active term of incarceration to serve after sentencing. The remaining offender was sentenced to a state-responsible (prison) term of one year.

[1] Formerly referred to as the Court Automated Information System (CAIS).

CCMS data for FY2010 through FY2012 indicate that a conviction for a Class 5 felony under § 18.2-308.2:2(M) for purchasing a firearm with the intent to transfer the firearm to an ineligible person was the primary, or most serious, offense for one offender during this time period. This offender did not receive an active term of incarceration to serve after sentencing. CCMS data also indicate that no offenders were convicted under § 18.2-308.2:2(N) for soliciting another to violate § 18.2-308.2:2(M) between FY2008 and FY2012.

Impact of Proposed Legislation:

State adult correctional facilities. Since there were no convictions for a violation of § 18.2-308.2:2(N) in a recent five-year period, increasing the penalty and establishing an additional mandatory minimum for a violation of this subsection is not expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. However, increasing the penalty and establishing a mandatory minimum for violations of § 18.2-308.2:2(M) and increasing the penalty for violations of § 18.2-308.2:1 is expected to impact future prison bed space needs. The impact is estimated to be an increase of two beds by FY2019. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is $46,773.

Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY14	FY15	FY16	FY17	FY18	FY19
0	1	1	1	2	2

Local adult correctional facilities. The proposal is also expected to increase the future need for local-responsible (jail) beds. The impact on local-responsible (jail) beds is estimated to be less than one bed by FY2019 (state costs: $4,182; local costs: $6,072).

Adult community corrections programs. The net impact of the proposal on community corrections resources cannot be determined.

Virginia's sentencing guidelines. The weapons offenses affected by this proposal are not covered by the sentencing guidelines as the primary (or most serious) offense; however, a conviction under one of those provisions may 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 may have an impact on juvenile correctional center bed space needs. However, the actual impact on juvenile correctional center bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that, while the proposal may have an impact on juvenile detention bed space needs, the actual impact on juvenile detention facilities cannot be determined.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is $46,773 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

Assumptions underlying the analysis include:
General Assumptions

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety's Committee on Inmate Forecasting in 2012.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety's Committee on Inmate Forecasting and approved in 2012.

3. Cost per prison bed was assumed to be $29,081 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.***
4. Cost per jail bed was based on The Compensation Board's FY2011 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was $28.21 per day or $10,304 per year. The local cost was calculated by using the daily expenditure cost of $74.07 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in $40.96 per day or $14,961 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.***

Assumptions relating to sentencing

1. The impact of the proposed legislation, which would be effective on July 1, 2013, is phased in to account for case processing time.
2. To gauge the impact on sentencing, it was assumed that the distribution of sentences for the affected Class 6 felony cases under § 18.2-308.2:1 and the Class 5 felony cases under § 18.2-308.2:2(M) will be similar to the distribution of sentences under the existing Class 4 felony provision for possession of a sawed off shotgun under § 18.2-300(B).
3. The state-responsible (prison) bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2011. For weapons offenders, this rate was 9.6%.

Limitations

1. The Circuit Court Case Management System does not include cases from Fairfax, Alexandria, or Virginia Beach.

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