



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 435

(Patron – McDougle)

LD#: 12104079

Date: 1/17/2012

Topic: Making a false statement on criminal history consent form for firearm purchase

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 modifies language in § 18.2-308.2:2(K) related to making a false statement on a criminal history consent form required for purchasing a firearm. Currently, under § 18.2-308.2:2(K), it is a Class 5 felony to “willfully and intentionally” make a materially false statement on the consent form. Under the proposal, any person who “knowingly” makes a material false statement on the consent form would be guilty of this offense.

Analysis:

In *Smith v. Commonwealth* (2011), the Virginia Supreme Court overturned a conviction under § 18.2-308.2:2 when it ruled that the evidence was insufficient to prove beyond a reasonable doubt that the defendant willfully and intentionally made a false statement on the consent form when he wrote that he was not under indictment for a felony. The defendant, in fact, had been indicted two days before in another jurisdiction but he asserted that he was unaware of the indictment at the time he completed the consent form. In its opinion, the Virginia Supreme Court ruled that the Court of Appeals had erred by relying on the standard in the federal statute which is “importantly different” from Virginia law and that, by using both “willfully and intentionally,” the General Assembly intended to impose a stricter standard of scienter (intent or knowledge of wrongdoing) in prosecutions for violations of § 18.2-308.2:2(K). In Federal Code, 18 U.S.C. § 922(a)(6) makes it a crime to “knowingly” make a false statement on a consent form.

Data are available regarding offenders convicted in Virginia’s circuit courts for violations of § 18.2-308.2:2(K) under current law. According to fiscal year (FY) 2009 and FY2010 Sentencing Guidelines (SG) data, there were 156 felony convictions under § 18.2-308.2:2(K) for providing false statements on a consent form. Most (75%) of these offenders were sentenced to probation without an

active term of incarceration. Approximately one-fifth (20.5%) of the offenders were sentenced to a local-responsible (jail) term, for which the median sentence was six months. The remaining 4.5% were sentenced to a state-responsible (prison) term. For offenders committed to prison, the median sentence length was 1.3 years.

Impact of Proposed Legislation:

State adult correctional facilities. By modifying the standard in § 18.2-308.2:2(K), the proposal may result in additional felony convictions for making a false statement on a criminal history consent form required for purchasing a firearm. As a result, the proposal could 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 programs. 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 sentencing guidelines cover convictions under §18.2-308.2:2 for making a false statement on a criminal history consent form. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. Although a juvenile may be charged under § 18.2-308.2:2(K), the Department of Juvenile Justice (DJJ) reports no intake petitions during FY2009 through FY2011 for a person under the age of 18 making a false statement on a criminal history consent form required to purchase a firearm. Therefore, although a juvenile may be subjected to the proposed amendments, the DJJ does not anticipate an impact upon juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. Similarly, although a juvenile may be subjected to the proposed amendments, the DJJ does not anticipate an impact on 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.