



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 61 (Patron – McQuinn, D.)

LD#: 14100309

Date: 10/24/2013

Topic: Illegal transfer of firearms

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 806 of the 2013 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 § 18.2-308.2:2 of the *Code of Virginia*, relating to the purchase and sale of firearms. Under the proposal, firearms dealers would be prohibited from selling, renting, trading, or transferring any firearm or assault firearm to any person who is not a resident of the Commonwealth. The proposal also makes several technical changes related to this modification. Federal law prohibits the sale of handguns to nonresident buyers, with the exception of handgun purchases made by law enforcement officers. Residents of other states may currently purchase rifles and shotguns in Virginia under the conditions set forth in § 18.2-308.2:2.

Subsection L of § 18.2-308.2:2 makes it a Class 6 felony for any firearms dealer to willfully and intentionally sell, rent, trade, or transfer a firearm in violation of this section. 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 from a dealer for whatever reason is punishable as a Class 4 felony that carries a mandatory minimum term of one year. Offenders who transfer more than one firearm in violation of § 18.2-308.2:2(M) are subject to a mandatory minimum term of five years imprisonment. Subsection N of § 18.2-308.2:2 makes it a Class 4 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 carries a mandatory minimum term of five years. Under § 18.2-308.2:2(K), making a materially false statement on a consent form that is required to purchase a firearm from a licensed dealer is a Class 5 felony. While potential buyers are not required to provide their address on the Virginia consent form (SP-65), potential buyers must report their current residence address as well as the State of residence on the federal consent form (ATF-4473). Potential buyers must also provide two forms of identification, both of which must reflect an identical address.

Analysis:

According to the Circuit Court Case Management System (CMS)¹ for fiscal year (FY) 2012 and FY2013, 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.

CMS data for FY2010 through FY2013 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 was sentenced in FY2010 and did not receive an active term of incarceration to serve after sentencing. CMS 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 FY2013.

According to FY2011 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; however, 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.

Impact of Proposed Legislation:

State adult correctional facilities. By prohibiting the sale of firearms to nonresidents, the proposal increases the instances in which individuals may violate the felony provisions of § 18.2-308.2:2. As a result, the proposal may impact the state-responsible (prison) bed space needs of the Commonwealth. However, the databases available to the Commission do not contain sufficient detail to estimate the number of offenders who may be affected by the proposal. Therefore, the magnitude of the impact cannot be quantified.

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. Felony violations of § 18.2-308.2:2(K), making a false statement on a consent form, are covered by the sentencing guidelines when this crime is the primary (most serious) offense. Felony convictions under § 18.2-308.2:2(L), (M), or (N) are not covered by the sentencing guidelines as the primary offense. A conviction for one of these offenses, however, 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.

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

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 806 of the 2013 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.

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