



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 736 (Patron – Lingamfelter)

LD#: 14103073

Date: 12/20/2013

Topic: Concealed handgun permits

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 several sections of the *Code of Virginia* relating to concealed handgun permits. In addition to moving the responsibility of issuing, suspending and revoking concealed handgun permits from the Circuit Court to the Department of State Police, the proposal removes the current five year expiration on concealed handgun permits issued to Virginia residents (it would remain in force for non-residents). Under the proposed § 18.2-308.017, the Department of State Police would be required to periodically conduct a national criminal history records check on all permit holders.

The proposed § 18.2-308.018 would make it a Class 1 misdemeanor (punishable by up to 12 months in jail) to knowingly possess a revoked or suspended concealed handgun permit. Possessing a concealed handgun while knowingly possessing a revoked or suspended permit would be punishable as a Class 6 felony.

Currently, under § 18.2-308(A), it is a Class 1 misdemeanor to carry a concealed weapon. A second violation under this section is a Class 6 felony and a third or subsequent violation is a Class 5 felony, punishable by up to ten years imprisonment. For offenses involving a concealed handgun, it is an affirmative defense that a person had a valid concealed handgun permit at the time of the offense. Under the proposed § 18.2-308.018, an individual who possesses a concealed handgun while also possessing a revoked or suspended permit would be guilty of a Class 6 felony, regardless of the number of prior convictions for carrying a concealed weapon.

Analysis:

Existing data do not contain sufficient detail to determine the number of convictions under § 18.2-308(A) involving firearms, as opposed to other types of concealed weapons. However, individuals convicted

under the proposed § 18.2-308.018 may be sentenced similarly to offenders sentenced under existing provisions for carrying a concealed weapon under § 18.2-308(A).

According to the General District Court Case Management System (CMS)¹ for fiscal year (FY) 2012 and FY2013, 2,125 offenders were convicted of a Class 1 misdemeanor for unlawfully carrying a concealed weapon in violation of § 18.2-308. The majority (68.4%) of these offenders did not receive an active term of incarceration to serve after sentencing. The remaining 31.6% were sentenced to local-responsible (jail) terms, with a median sentence length of one month.

Data from the FY2012 and FY2013 Circuit Court Case Management System indicate that 71 offenders were convicted of a Class 6 felony for a second violation of unlawfully carrying a concealed weapon under § 18.2-308. The weapon charge was the primary, or most serious, offense in 46 of the cases. Nearly half (41.3%) of these offenders received a local-responsible (jail) term, with a median sentence of three months. While slightly more than one-third (37%) of the offenders did not receive an active term of incarceration to serve after sentencing, the remaining 21.7% were sentenced to a state-responsible (prison) term, with a median sentence length of one year.

According to the Circuit Court Case Management System for FY2012 and FY2013, ten offenders were convicted of a Class 5 felony for a third or subsequent violation of § 18.2-308 during this time period. The weapon charge was the primary offense in nine of the cases. The majority (66.7%) of these offenders were sentenced to a prison term, for which the median sentence length was one year. One offender was sentenced to a local-responsible (jail) term of three months and the remaining offenders did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. By establishing a new Class 6 felony, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing data do not provide sufficient detail to estimate the number of new felony convictions that could result from enactment of the proposal. Therefore, the magnitude of the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal could 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 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. As a new felony, convictions under the proposed § 18.2-308.018 would not be covered under the sentencing guidelines as the primary (most serious) offense in a case. However, a conviction under this provision can 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 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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