



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 964 (Patron – Surovell)

LD#: 14103388

Date: 1/6/2014

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:**  
Cannot be determined, likely to be small
- **Juvenile Detention Facilities:**  
Cannot be determined, likely to be small

\* 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 adds § 18.2-308.1:6 to the *Code of Virginia* to make it a Class 1 misdemeanor to purchase a firearm with the intent to commit, conspire to commit, or aid and abet in the commission of an act of terrorism. The proposed amendments to § 18.2-308.2:1 would make it a Class 4 felony to sell, barter, give, furnish, or possesses with the intent to sell, etc., a firearm to a person who has expressed an intention to commit an act of terrorism. Currently, under § 18.2-308.2:1, it is a Class 4 felony to sell, etc., a firearm to a person known to be prohibited from possessing or transporting firearms for certain reasons, such as having been convicted of a felony or found legally incompetent.

The proposed modifications to § 18.2-308.09 would disqualify any person who intends to commit an act of terrorism and individuals who are named on the consolidated Terrorist Watchlist from obtaining a concealed handgun permit. Firearms dealers would be prohibited from employing any person who intends to commit an act of terrorism as a seller for the transfer of firearms.

The General Assembly has amended § 18.2-308.2:1 several times in recent years. Specifically, the 2008 General Assembly expanded the prohibition contained in this section to include the transfer of firearms to individuals prohibited from possessing a firearm because they are not lawfully present in the United States. In 2011, the General Assembly clarified language regarding when the provisions of § 18.2-308.2:1 do not apply. The 2013 General Assembly expanded the applicability of § 18.2-308.2:1 to include additional circumstances and increased the penalty for a violation of this section from a Class 6 felony to a Class 4 felony.

#### Analysis:

Available data do not contain sufficient detail to determine the number of incidents that would be affected by the proposal. However, affected offenders may be sentenced similarly to those who are currently convicted under § 18.2-308.2:1.

According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2012 and FY2013, 17 offenders were convicted under § 18.2-308.2:1 for selling, bartering, giving, or furnishing a firearm to a person known to be prohibited from possessing or transporting a firearm. 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 local-responsible (jail) term of six months. Although no offenders received a state-responsible (prison term) for a violation of § 18.2-308.2:1 between FY2012 and FY2013, one offender was sentenced to a prison term of one year for this offense in FY2011.

Circuit Court CMS data for FY2012 and FY2013 also indicate that one offender was convicted of a felony under § 18.2-46.5(A) in circuit court for committing, conspiring, or aiding and abetting an act of terrorism. This offender was convicted of attempting to commit an act of terrorism where the base offense was punishable by twenty or more years imprisonment and obstruction of justice by threats or force. In this case, the offender was sentenced to a state-responsible (prison) term of five years.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Because it creates a new felony offense, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, 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 bed space needs 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 resources.** 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.** Because the proposal defines a new felony offense, convictions under the proposed § 18.2-308.2:1(B) 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 (DJJ) reports that, while this proposal may cause a limited increase in commitments, the impact of this proposal on bed space needs of juvenile correctional centers cannot be determined.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal's impact on detention center bed space will be limited; however, the exact impact cannot be determined.

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**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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**