



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 287 (Patron – Deeds)

LD#: 14100115

Date: 11/15/2013

Topic: Criminal history record check required to transfer firearm

#### 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 adds § 18.2-308.2:4, relating to criminal history record information checks for the transfer of firearms, to the *Code of Virginia*. Under the proposal, any person who 1) does not obtain verification from a licensed firearms dealer that a prospective purchaser or transferee of a firearm is not prohibited from possessing a firearm and 2) willfully and intentionally sells, rents, trades, or transfers a firearm to a person who is prohibited from possessing a firearm would be guilty of a Class 6 felony. Essentially, the proposal appears to expand requirements relating to criminal history record checks for firearms purchases to include additional types of transfers, such as private transfers and transfers completed at gun shows. However, the new felony penalty would only apply if the recipient is prohibited from possessing a firearm. This penalty would not apply in instances where a firearm is sold, etc., to an individual who is not prohibited from possessing a firearm, but verification from a licensed dealer was not obtained.

Currently, § 18.2-308.2:1 makes it a Class 4 felony to sell, barter, give, or furnish 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 Class 6 felony under § 18.2-308.2:4 would cover instances where a person sells, etc., a firearm to a person who is prohibited from possessing a firearm without first obtaining a background check to determine if they are prohibited from possessing a firearm. If a background check is obtained and indicates that the intended recipient is prohibited from possessing a firearm, an individual may be subject to the Class 4 felony penalty in § 18.2-308.2:1 if the person transfers the firearm to the person they now know is prohibited from possessing it.

Under the existing § 18.2-308.2:2(L), any firearms dealer who sells, rents, trades, or transfers a firearm in violation of § 18.2-308.2:2 is guilty of a Class 6 felony. Subsection K of § 18.2-308.2:2 establishes a Class 5 felony for willfully and intentionally making a materially false statement on firearm transaction records required by federal law or on the consent form required for individuals who attempt to purchase a firearm from a firearms dealer pursuant to § 18.2-308.2:2(B) or (C).

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**Analysis:**

Available data do not contain sufficient detail to determine the number of incidents that would be affected by the proposal.

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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. In addition, if a firearms dealer must obtain a consent form in order to conduct the background check pursuant to the proposed § 18.2-308.2:4, the proposal may also increase the number of felony convictions under § 18.2-308.2:2(K) when individuals make a false statement on the consent form (if these individuals can be prosecuted under paragraph K). 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 additional 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 section of the *Code* 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. The sentencing guidelines currently cover felony convictions for making a false statement on a consent form under § 18.2-308.2:2(K) when this crime is the primary (most serious) offense in a case. No adjustment to the guidelines is 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.

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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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**