



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 1923

(Patron – Murphy)

LD#: 15101423

Date: 12/28/2014

Topic: Criminal history checks for firearm transfers

#### 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\*\*
- **Juvenile Detention Facilities:**  
Cannot be determined\*\*

\*\*Provided by the Department of Juvenile Justice

\* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the 2014 Acts of Assembly, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

#### Summary of Proposed Legislation:

The proposal adds § 18.2-308.2:5, relating to criminal history record checks for the transfer of firearms, to the *Code of Virginia*. Under the proposal, any person who transfers a firearm must first obtain verification from a licensed firearms dealer that a prospective purchaser is not prohibited from possessing a firearm under state or federal law. Essentially, the proposal expands requirements relating to criminal history record checks for firearms purchases to include additional types of transfers, such as gun shows and private transfers. Under the proposal, any person who transfers a firearm without first obtaining such verification would be guilty of a Class 1 misdemeanor. Pursuant to § 18.2-311.2, a third or subsequent Class 1 misdemeanor firearm violation (defined in Article 4, 5, 6, or 7 of Chapter 7 of Title 18.2) is punishable as a Class 6 felony.

The proposal also states that the definitions and provisions of § 18.2-308.2:2 regarding criminal history record checks would apply to the proposed § 18.2-308.2:5. Currently, under § 18.2-308.2:2(K), making a materially false statement on the criminal history consent form is a Class 5 felony. Under § 18.2-308.2:2, only licensed firearms dealers must obtain verification on purchasers prior to selling or transferring a firearm. Except as otherwise provided, a licensed dealer who sells or transfers a firearm in violation of § 18.2-308.2:2 is guilty of a Class 6 felony.

As proposed, transfers made as gifts to immediate family members, by operation of law, or by an executor disposing of estate property would be exempt from the new requirements.

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**Analysis:**

Existing data sources do not contain sufficient detail to estimate the number of firearm transfers that would require completion of a criminal history background check if the proposal were enacted or how many additional misdemeanor or felony convictions may result. However, individuals convicted of a felony for making a false statement on the consent form under the proposed requirements may be sentenced similarly to those convicted under the existing provisions of § 18.2-308.2:2(K). According to fiscal year (FY) 2013 and FY2014 Sentencing Guidelines data, there were 135 felony convictions under § 18.2-308.2:2(K) for making false statements on the criminal history consent form. This offense was the primary, or most serious, offense in 130 of the cases. The majority (70.8%) of these offenders did not receive an active term of incarceration to serve after sentencing. Nearly one-fourth (23.1%) of the offenders received a local-responsible (jail) term, for which the median sentence was six months. The remaining 6.1% were sentenced to a state-responsible (prison) term. For offenders committed to prison, the median sentence length was 1.25 years.

According to data from the Circuit Court Case Management System, no felony convictions for a third or subsequent misdemeanor firearms violation under § 18.2-311.2 resulted in a state-responsible (prison) sentence during FY2009-FY2014.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Because it expands the circumstances in which an individual must submit a criminal history consent form, the proposal may result in additional felony convictions for making a false statement on the form. In this way, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. 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 beds 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 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 affected cannot be determined, the potential impact on community corrections cannot be quantified.

**Virginia's sentencing guidelines.** Felony convictions under § 18.2-308.2:2(K) are covered by the current sentencing guidelines when this crime is the primary, or most serious, offense in a case. No adjustment to the guidelines would be necessary under the proposal.

**Juvenile correctional centers.** According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities 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 2 of the 2014 Acts of Assembly, Special Session I, 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.**