Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1441
(Patron – Lucas)

LD#: 15101393 **Date:** 12/9/2014

Topic: Criminal history checks at firearms shows

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)**

**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 § 54.1-4201.2, relating to purchases at firearms shows, to the *Code of Virginia*. As proposed, any party to a firearm transaction at a firearms show would have the option to ask the Department of State Police to determine if a prospective purchaser or transferee is prohibited from possessing a firearm. This determination would be made in accordance with the procedures set out in § 18.2-308.2:2. The proposal contains an enactment clause stating that the provisions of the proposal would not become effective unless the Department of State Police receives approval to implement the proposed policies and procedures from the U.S. Department of Justice.

Currently, under § 18.2-308.2:2, 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. Any person who willfully and intentionally sells, rents, trades, or transfers a firearm in violation of these provisions is guilty of a Class 6 felony. Willfully and intentionally requesting or obtaining criminal history information under false pretenses or unlawfully disseminating criminal history record information is a Class 2 misdemeanor.

Analysis:

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 a false statement on a 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 and 23.1% of the offenders were

sentenced to 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 sentenced to prison, the median sentence length was approximately 1.3 years.

Impact of Proposed Legislation:

State adult correctional facilities. According to the Virginia State Police (VSP), licensed firearms dealers are required to conduct background checks on their potential buyers, even when the dealer conducts the sale at a firearms show. VSP reports that they have arrested individuals for making a false statement on the consent form currently required by § 18.2-308.2:2 when the transaction occurred at a firearms show. Because it may increase the instances in which individuals could make a false statement on a firearm consent form in violation of § 18.2-308.2:2(K), 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 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. Felony violations of § 18.2-308.2:2(K) are covered by the sentencing guidelines when this crime is the primary (most serious) offense. 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 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 is $0 for periods of commitment to the custody of the Department of Juvenile Justice.

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