



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1000

(Patron – Levine)

LD#: 16101896

Date: 1/5/2016

Topic: Criminal history checks for online firearm sales

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 665 of the 2015 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 § 18.2-308.2:5, relating to online purchases of firearms, to the *Code of Virginia*. Under the proposal, it would be unlawful for any person to sell, rent, trade, or transfer a firearm unless he has obtained verification from a licensed firearms dealer that the prospective purchaser or transferee is not prohibited from possessing a firearm if the sale, etc., was arranged through Internet-based communications. Any person who fails to obtain such verification would be guilty of a Class 1 misdemeanor. The proposal also specifies that the determination would be made in accordance with the existing procedures set out in § 18.2-308.2:2 and the provisions of § 18.2-308.2:2, including definitions, procedures, and prohibitions, would apply. The proposal provides exemptions for certain types of transfers. Further, the proposal makes it a Class 1 misdemeanor to place an advertisement for a firearm when one knows or should reasonably know that the purpose of said advertisement is to illegally sell or transfer a firearm.

Currently, pursuant to § 18.2-311.2, a third or subsequent Class 1 misdemeanor weapons violation (defined in Article 4, 5, 6, or 7 of Chapter 7 of Title 18.2) is punishable as a Class 6 felony. Under § 18.2-308.2:2(K), 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.

Analysis:

According to fiscal year (FY) 2014 and FY2015 Sentencing Guidelines data, there were 172 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 163 of the cases. The majority (74.8%) of these offenders did not receive an active term of incarceration to serve after sentencing, while 19.6% of the offenders were

sentenced to a local-responsible (jail) term, for which the median sentence was seven months. The remaining 5.5% were sentenced to a state-responsible (prison) term. For offenders sentenced to prison, the median sentence length was 1.25 years.

Offenders convicted of the proposed Class 1 misdemeanors who accumulate three or more misdemeanor weapon convictions could be found guilty of a Class 6 felony under § 18.2-311.2. A review of FY2010-FY2015 Circuit Court Case Management System data for all felony convictions resulting from a third or subsequent misdemeanor weapon violation revealed that, during the six-year period, none of the offenders received a state-responsible (prison) sentence.

Impact of Proposed Legislation:

State adult correctional facilities. 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. 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. By expanding the applicability of an existing felony and creating new misdemeanor offenses, 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 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. Convictions under § 18.2-311.2 are not covered by the guidelines as the primary, or most serious, offense. Such a conviction, however, could augment the sentence recommendation if the most serious offense is covered by the guidelines. No adjustment to the guidelines is necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional center 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.

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 665 of the 2015 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.