



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1109

(Patron – Murphy)

LD#: 16103944

Date: 1/11/2016

Topic: Concealed handgun permits

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 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 amends § 18.2-308.09 of the *Code of Virginia* relating to disqualifications for concealed handgun permits. Under the proposal, when an individual applies for a concealed handgun permit, any family member who has ever resided with the applicant would be allowed to submit a sworn written statement to the court stating that, in the opinion of the family member, the applicant is likely to use a weapon unlawfully or negligently to endanger others. Based on the preponderance of the evidence, the court may disqualify the individual from obtaining a concealed handgun permit.

Currently, sheriffs, police chiefs, and Commonwealth's Attorneys may submit such statements to the court if they, or a member of their department or office, have personal knowledge of specific acts by the applicant (§ 18.2-308.09(13)). Existing provisions also allow one of these officials to submit a sworn written statement made by any competent person having personal knowledge of specific acts to the court for its consideration of an individual's application for a concealed handgun permit. Thus, the proposal would allow family members to submit a statement directly to the court rather than requiring the statement be given to a local official in order for it to be submitted to the court.

The proposal also specifies that, if an applicant is denied a concealed handgun permit based on a statement to the court, and the denial is upheld on appeal, the individual cannot reapply for a permit for five years. When reapplying for a permit, the applicant would be required to include documentation as to why he is no longer likely to use a weapon unlawfully or negligently to endanger others. Currently, there is no waiting period for re-application after being disqualified for a permit under § 18.2-308.09(13), and the applicant is not required to provide any additional documentation in the new application.

Pursuant to § 18.2-308.02(C), individuals who make a materially false statement in an application for a concealed handgun permit may be prosecuted for perjury, which is punishable as a Class 5 felony under § 18.2-434. In addition, forgery of a public record, etc., is punishable as a Class 4 felony under § 18.2-168.

Analysis:

According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2014 and FY2015, no individuals were convicted of a felony under § 18.2-308.02(C) for making a false statement on a concealed handgun permit application. Existing data do not contain sufficient detail to determine the number of new felony convictions that would result from enactment of the proposal. However, individuals affected by the proposal who could potentially be convicted under § 18.2-308.02(C) may be sentenced similarly to offenders sentenced under § 18.2-434 for perjury.

Sentencing Guidelines data for FY2014 and FY2015 indicate that 113 offenders were convicted of a Class 5 felony for falsely swearing an oath under § 18.2-434. The perjury offense was the primary, or most serious, offense at sentencing in 82 of the cases. Nearly half (46.3%) of these offenders did not receive an active term of incarceration to serve after sentencing. More than one-third (37.8%) of the offenders were given a local-responsible (jail) term, for which the median sentence was six months. The remaining 15.9% received a state-responsible (prison) term with a median sentence of 1.5 years.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the requirements for individuals who reapply for concealed handgun permits after being disqualified pursuant to § 18.2-308.09(13), the proposal would increase the circumstances in which an individual may make a false statement on the permit application. This could result in additional perjury convictions under § 18.2-308.02(C). As a result, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing data sources, however, do not provide sufficient detail to estimate the number of new felony convictions that could result from enactment of the proposal. Therefore, the magnitude of the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal could increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be determined.

Adult community corrections programs. 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. Convictions under § 18.2-308.02(C) are not covered by the sentencing guidelines when this offense is the primary (most serious) offense in a case. However, a conviction under this provision can augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. 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 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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

firearmpermit05_3944