



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 809 (Patron – Lingamfelter)

LD#: 16100102

Date: 12/16/2015

Topic: Firearm sales to certain persons

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 amends § 18.2-308.2:1, which prohibits the sale of firearms to certain people. Currently, under § 18.2-308.2:1, it is a Class 4 felony to sell, barter, give, or furnish a firearm to a person known to be prohibited from possessing or transporting certain firearms because the individual:

- has been acquitted by reason of insanity and committed to the Commissioner of Behavioral Health and Developmental Services for certain offenses (§ 18.2-308.1:1);
- has been found legally incompetent or mentally incapacitated (§ 18.2-308.1:2);
- has been ordered into involuntary inpatient or outpatient treatment or has agreed to voluntary admission after being the subject of a temporary detention order (§ 18.2-308.1:3)
- has been convicted of a felony, or adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense (§ 18.2-308.2);
- is not a citizen of the United States and is not lawfully present in the United States (§ 18.2-308.2:01(B)); or
- is under 18 years of age (§ 18.2-308.7).

The proposal expands the applicability of this felony to include the sale, etc., of firearms to persons who are not citizens of the United States or are not lawfully admitted for permanent residence (§ 18.2-308.2:01(A)).

The General Assembly has amended § 18.2-308.2:1 several times in recent years. Specifically, the 2008 General Assembly expanded the prohibition contained in this section to include the transfer of firearms to individuals prohibited from possessing a firearm because they are not lawfully present in the United

States. In 2011, the General Assembly clarified language regarding when the provisions of § 18.2-308.2:1 do not apply. The 2013 General Assembly expanded the applicability of § 18.2-308.2:1 to include additional circumstances and increased the penalty for a violation of this section from a Class 6 felony to a Class 4 felony.

Analysis:

According to fiscal year (FY) 2014 and FY2015 Circuit Court Case Management System (CMS) data, there were 19 felony convictions under § 18.2-308.2:1 for selling a firearm to an unauthorized person. This offense was the primary, or most serious, offense in eight of the cases. Seven of these offenders received a local-responsible (jail) term, for which the median sentence was six months. The remaining offender was sentenced to a state-responsible (prison) term of three years.

Impact of Proposed Legislation:

State adult correctional facilities. Because it expands the applicability of an existing Class 4 felony, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Existing data sources do not contain sufficient detail to estimate the number of additional felony convictions that may 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 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 § 18.2-308.2:1 are not covered by the sentencing guidelines when this offense is the primary, or most serious, offense in a case. However, convictions under this statute could 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 (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.

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.