Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 301
(Patron – Ebbin)

LD#: 16100804 **Date:** 12/15/2015

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 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 §§ 54.1-4200 and 54.1-4201.1 of the *Code of Virginia* and adds provisions relating to purchases at firearms shows. Under the proposed § 18.2-308.2:5, gun show vendors would be required to obtain verification from a licensed firearms dealer that a prospective purchaser is not prohibited from possessing a firearm under state or federal law. The transfer of antique firearms, curios, or relics, as defined in § 18.2-308.2:2, would be exempt from these requirements.

The penalties proposed for firearms show vendors and their prospective buyers parallel existing penalties for licensed dealers and their prospective buyers. Making a materially false statement on a consent form required to purchase a firearm (as specified in § 18.2-308.2:2) or related federal firearm transaction records 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.

In addition, the proposed amendments to § 54.1-4200 define the terms "firearms show vendor" and "promoter." Under these definitions, firearms show vendors would include all persons selling or trading firearms, regardless of whether they have arranged with the promoter to have an exhibit space. The proposed § 54.1-4201.2 outlines the duties of the promoter in verifying the identities of the vendors and providing each vendor with a notice of statutory obligations, as well as posting a notice at the firearms show that describes the requirement for a criminal history record check. This part of the proposal would also require promoters to make one or more licensed dealers available to firearms show vendors for the purpose of conducting criminal history checks on prospective buyers.

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.

The Circuit Court Case Management System (CMS) for FY2014 and FY2015 indicates that no offenders were convicted of a Class 6 felony under § 18.2-308.2:2(L) relating to dealers selling or transferring firearms in violation of § 18.2-308.2:2.

According to General District CMS data for FY2014 and FY2015, two individuals were convicted of a misdemeanor under § 18.2-308.2:2(F) for unlawfully disseminating criminal history information or obtaining criminal history information under false pretenses. Neither of these offenders received an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. Because it creates new felony offenses, 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. 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. As new felony offenses, convictions under the proposed section of the *Code* would not be covered by the sentencing guidelines as the primary, or most serious, offense. Such a conviction, however, could augment the guidelines recommendation if the most serious offense at sentencing 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, 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.

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