



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1287 (Patron – Murphy)

LD#: 20103793

Date: 12/23/2019

Topic: Employees of a firearms dealer

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$0 (None)
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Direct Care:**
Cannot be determined *
- **Juvenile Detention Facilities:**
Cannot be determined *

** Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposal amends § 18.2-308.2:3 of the *Code of Virginia* to provide that no person, corporation, or proprietorship licensed as a firearms dealer shall employ any person who is prohibited from possessing, purchasing, or transporting a firearm. As part of a mandatory background check process, dealers must obtain statements from applicants prior to employment that they are not disqualified from possessing a firearm. Dealers also must forward applicants' fingerprints and personal descriptive information to the Central Criminal Records Exchange (CCRE). In lieu of submitting fingerprints, any dealer with a federal firearms license issued by the US Bureau of Alcohol, Tobacco and Firearms (ATF) may submit a sworn affidavit to the Virginia State Police (VSP), stating that each person seeking exemption has been subjected to an ATF fingerprint check. Under current law, the above regulations are limited to persons employed as a seller for the transfer of firearms.

The proposal requires dealers to obtain written statements or affirmations-- stating that they are not disqualified from possessing a firearm—from all firearms employees who were employed before July 1, 2020, and have not had a background check performed. Additionally, dealers must submit background check information for these employees to the CCRE.

Analysis:

While existing data cannot provide the number of convictions that may result from the proposal, it may increase § 18.2-308.2:3 felony and misdemeanor convictions against both firearms dealers with expanded background check obligations, and firearm employees who are newly subject to the background check process. Offenders convicted under the proposal may be sentenced similarly the those currently convicted under § 18.2-308.2:3 violations. It is a Class 5 felony to willfully and intentionally make a false statement on the exception affidavit to the VSP (§ 18.2-308.2:3(C,1)) or the personal descriptive information required in the background check (§ 18.2-308.2:3(J)). It is a Class 2 misdemeanor to request, obtain, or seek to obtain criminal

history record information related to the background check process under false pretenses (§ 18.2-308.2:3(I)). It is a Class 1 misdemeanor to offer for transfer any firearm, or to willfully and knowingly employ a firearm employee in violation of the background check process (§ 18.2-308.2:3(J)).

The below tables outline conviction and sentencing information for these crimes.

Offenders Convicted of Select Misdemeanor Firearm Offenses, FY2014-FY2019

Primary Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
Obtain firearms dealer criminal history info under false pretenses (§ 18.2-308.2:3(I))	20	45.0%	55.0%	11 days	N/A	N/A
Dealer allows unauthorized person to act as firearm seller (§ 18.2-308.2:3(J))	0	N/A	N/A	N/A	N/A	N/A
Offer firearm for unlawful transfer (§ 18.2-308.2:3(J))	11	45.5%	54.5%	11 days	N/A	N/A

Offenders Convicted of Select Felony Firearm Offenses, FY2014-FY2019 (continued)

Primary Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
False statement on affidavit (§ 18.2-308.2:3(C,1))	0	N/A	N/A	N/A	N/A	N/A
False statement on required personal descriptive information (§ 18.2-308.2:3(J))	1	100%	0%	N/A	0%	N/A

Note: The analysis is based on cases in which the specified offense was the primary, or most serious, offense in the sentencing event.

Sources: Supreme Court of Virginia - Circuit Court Case Management System (CMS), FY2014-FY2019.

Offenders convicted of the proposed Class 1 firearm misdemeanor who accumulate three or more firearm convictions could be found guilty of a Class 6 felony under § 18.2-311.2. A review of fiscal year (FY) 2014 through FY2019 Circuit Court Case Management System (CMS) data for all felony convictions under § 18.2-311.2 resulting from a third or subsequent misdemeanor firearms 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. Offenders convicted of the proposed Class 1 misdemeanor offense under § 18.2-308.2:3 could, in the future, be convicted of a Class 6 felony under § 18.2-311.2 if they accumulate three or more weapon convictions. In the six most recent fiscal years, however, no offender convicted of a felony under § 18.2-311.2 has received a state-responsible (prison) sentence. Furthermore, the only felony conviction under § 18.2-308.2:3 since FY2014 did not result in an active term of incarceration to serve after sentencing. Therefore, this proposal is not expected to have an impact on the state-responsible (prison) bed space needs of the Commonwealth during the six-year window specified by § 30-19.1:4 for legislative impact statements.

Local adult correctional facilities. By expanding current misdemeanor and felony offenses, the proposal may increase local-responsible (jail) bed space needs. Because the number of new convictions that may result from enactment of the proposal cannot be determined, the magnitude of the impact on jail bed space needs cannot be estimated.

Adult community corrections programs. Because the proposal could result in both misdemeanor and 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 cannot be quantified.

Virginia's sentencing guidelines. Violations of § 18.2-308.2:3 are not covered by the sentencing guidelines as the primary, or most serious, offense. Such convictions, 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 direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) 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 is \$0 for periods of imprisonment in state adult correctional facilities.

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.

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