

## Department of Planning and Budget 2020 Fiscal Impact Statement

**1. Bill Number:** HB2

House of Origin	<input checked="" type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Enrolled

**2. Patron:** Plum

**3. Committee:** Public Safety

**4. Title:** Firearm transfers; criminal history record information checks, penalty.

**5. Summary:** The proposed legislation would require all firearm sales or transfers, in whole or in part in the Commonwealth, including a sale or transfer where either purchaser or seller or transferee or transferor is in the Commonwealth, be subject to a criminal history record information check unless specifically exempted by state or federal law. Additionally, the bill provides the following:

- Any person wishing to purchase a firearm from a dealer must indicate on the firearm purchase form provided by VSP (SP-65), if they have been the subject of a temporary detention order and subsequently agreed to a voluntary admission to a state facility.
- It increases the period of time within which VSP must notify a dealer of an individual's ineligibility to possess a firearm from the end of the next business day to the third business day, and allows dealers to complete the sale if they are notified by VSP that a response will not be available by the end of the dealer's third business day.
- The bill clarifies that dual residents of Virginia and another state must undergo a criminal history record information check performed by VSP that confirms their eligibility to possess a firearm, and removes a provision that provides a ten day window for VSP to respond to requests for background checks from nonresidents. It includes a provision outlining acceptable documentation of dual residence for such transactions.
- In order to establish personal identification and dual resident eligibility for purposes of this subsection, a dealer must require any prospective purchaser to present one photo identification form issued by a governmental agency of the prospective purchaser's state of legal residence and other documentation of dual residence within the Commonwealth. The other documentation of dual residence in the Commonwealth may include (i) evidence of currently paid personal property tax or real estate tax or a current (a) lease, (b) utility or telephone bill, (c) voter registration card, (d) bank check, (e) passport, (f) automobile registration, or (g) hunting or fishing license; (ii) other current identification allowed as evidence of residency by

federal law; (iii) other documentation of residence determined to be acceptable by the Department of Criminal Justice Services and that corroborates that the prospective purchaser currently resides in Virginia.

- No person shall sell, rent, trade, or transfer a firearm unless he has obtained verification from a licensed dealer in firearms that information on the prospective purchaser or transferee has been submitted for a criminal history record information check as set out and that a determination has been received from the Department of State Police that the prospective purchaser or transferee is not prohibited under state or federal law from possessing a firearm.
- The Department of State Police must provide a means by which transferors may obtain from designated licensed dealers the approval or denial of firearm transfer requests, based on criminal history record information checks. The processes established shall conform to the provisions of §18.2-308.2:2 (criminal history record information check required for the transfer of certain firearms).
- The designated dealer shall collect and disseminate the fees prescribed in § 18.2-308.2:2 as required by that section (\$2 for every transaction for which a criminal history record information check is required, except that a fee of \$5 shall be collected for every transaction involving an out-of-state resident. Such fee shall be transmitted to the Department of State Police).
- The dealer may charge and retain an additional fee not to exceed \$15 for obtaining a criminal history record information check on behalf of a transferor.
- The bill exempts transfers that: (1) are a bona fide gift made by or to a member of a transferor's immediate family as defined; (2) the transfer occurs by operation of law; (3) the person receiving the firearm is an executor or administrator of an estate or is a trustee of a trust created by a will, and the firearm to be transferred is property of such estate or trust; (4) the transferor is an executor or administrator of an estate or is a trustee of a trust created by a will, and the firearm to be transferred is property of such estate or trust; (5) the transfer occurs at a firearms show, and the transferor has received a determination from the Department of State Police that the transferee is not prohibited under state or federal law from possessing a firearm; (6) the transfer is temporary and occurs within the continuous presence of the owner of the firearm; (7) the transfer is temporary and occurs within the continuous presence of the owner of the firearm; (8) the sale or transfer of a firearm is to an authorized representative of the Commonwealth or any subdivision thereof as part of an authorized voluntary gun buy-back or give-back program; (9) the transfer is of an antique firearm; or (10) the transfer occurs at a shooting range, shooting gallery, or other area designed for the purpose of target shooting or for use during target practice, a firearms safety or training course or class, a shooting competition, or any similar lawful activity.

- Any person who willfully and intentionally sells, rents, trades, or transfers a firearm to another person without obtaining verification in accordance with this section is guilty of a Class 6 felony.
  - Any person who willfully and intentionally purchases or receives a firearm from another person without obtaining verification in accordance with this section is guilty of a Class 1 misdemeanor.
- 6. Budget Amendment Necessary:** No. Funding for this proposed legislation was included in Items 402 and 425 of the Governor's introduced budget (HB30/SB29).
- 7. Fiscal Impact Estimates:** Preliminary. See below.
- 8. Fiscal Implications:** This bill would require the Department of State Police (VSP) to complete a background check on every prospective firearms purchaser. According to VSP, the agency already has a process in place to accommodate background checks for private sales of firearms at a dealer's place of business or at a gun show event. The agency believes that its current staffing level within the Firearms Transaction Center (FTC) for personnel that perform these checks is adequate to absorb the increased workload resulting from this bill.

VSP expects an additional 131 additional criminal investigations to be performed on ineligible individuals who attempt to purchase a firearm. This is based on an analysis of data from other states that have implemented similar legislation, and Virginia's current denial rate of 0.73%. VSP also expects to perform investigations on individuals who otherwise fail to comply with the proposed legislation, though it is indeterminate how many investigations would result from individuals selling or purchasing a firearm without a background check. Additionally, VSP would be required to modify its form that all prospective firearms purchasers are required to complete at the time of purchase (Form SP-65) to include a question about whether the purchaser has ever been the subject of a temporary detention order and subsequently agreed to a voluntary admission to a state facility. Modification of Form SP-65 requires a one-time cost of \$14,086. VSP anticipates this proposed legislation will require an additional 20 sworn positions (four sergeants and 16 troopers), for a total cost of \$4,048,978 the first year and \$2,309,272 per year thereafter.

Included in the Governor's introduced budget is \$1,687,898.83 the first year, \$1,073,463 the second year, and eight positions to assist VSP in its response to this proposed legislation. Additionally, VSP was provided with \$5,106,720 the first year and \$1,396,637 the second year to convert existing civilian compliance officer positions into sworn positions within the current sex offender investigative unit to establish a new unit responsible for investigating both sex offender registry and firearms offenses. According to VSP, if the funding associated with the new unit and the universal background checks positions (Item 425) remains in the final approved budget, no additional resources will be required to implement this legislation.

This bill also makes it a Class 1 misdemeanor to purchase or receive a firearm from another person without obtaining a criminal record check from a licensed dealer. Therefore, the proposed legislation could result in additional inmates in local or regional jails. Anyone

convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail. Sufficient information is not available to reliably estimate the increase in jail population as a result of this proposal; however, any increase in jail population will increase costs to the state. The Commonwealth currently pays localities \$4.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail. It also funds a large portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. According to the Compensation Board's most recent Jail Cost Report (November 2019), the estimated total state support for local jails averaged \$34.07 per inmate, per day in FY 2018.

The bill also makes it a Class 6 felony to sell, rent, trade, or transfer a firearm to another person without obtaining a criminal record check from a licensed dealer. Additionally, a third or subsequent misdemeanor firearms conviction is punishable as a Class 6 felony, so this bill could also result in additional inmates sentenced to prison. For someone convicted of a Class 6 felony, a judge has the option of sentencing him to up to 12 months in jail, or one to five years in prison.

The bill also expands the applicability of several existing offenses, including § 18.2-308.2:2(F) (obtaining criminal history information under false pretenses as a dealer or unlawfully disseminating this information, which is a Class 2 misdemeanor); § 18.2-308.2:2(K) (making a materially false statement on a firearms purchase consent form, which is a Class 5 felony); § 18.2-308.2:2(L) (selling, renting, trading, or transferring a firearm in violation of the Code as a licensed firearms dealer); § 18.2-308.2:2(M) (purchasing a firearm with the intent to transfer it to an individual who is disqualified from possessing it, which is a Class 4 felony with a mandatory minimum sentence of one year; transfers of multiple firearms under this section carry a mandatory minimum sentence of five years); and § 18.2-308.2:2 (N) (prohibition against ineligible persons soliciting, employing, or assisting another to purchase a firearm on their behalf, which is a Class 4 felony with a mandatory minimum sentence of five years).

Due to the lack of available data to develop a specific fiscal impact, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 854, 2019 Acts of Assembly, requires that a minimum impact of \$50,000 be assigned to the bill related to the potential cost of additional incarcerations. Funding for this fiscal impact on DOC was provided in the Governor's introduced budget for the 2020-2022 biennium.

**9. Specific Agency or Political Subdivisions Affected:** Department of State Police, Department of Corrections, Local and regional jails, Courts.

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** None.