



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 355

(Patron – Kory)

LD#: 20100162

Date: 11/05/2019

Topic: Criminal history checks for firearm transfers

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 854 of the 2019 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal adds § 18.2-308.2:5 and amends § 54.1-4201.2, relating to criminal history record checks for the transfer of firearms. Under the proposal, any person who transfers a firearm must first obtain verification from a licensed firearms dealer that a prospective purchaser is not prohibited from possessing a firearm under state or federal law. Essentially, the proposal expands requirements relating to criminal history record checks for firearms purchases to include additional types of transfers, such as gun shows and private transfers. In addition, the proposal sets out specific exceptions to these restrictions.

Under the proposal, any person who transfers a firearm without first obtaining such verification would be guilty of a Class 1 misdemeanor. Pursuant to § 18.2-311.2, a third or subsequent Class 1 misdemeanor weapon violation (defined in Article 4, 5, 6, or 7 of Chapter 7 of Title 18.2) is punishable as a Class 6 felony. The proposal also states that the definitions and provisions of § 18.2-308.2:2 regarding criminal history record checks would apply to the proposed § 18.2-308.2:5. Currently, under § 18.2-308.2:2(K), making a materially false statement on the criminal history consent form is a Class 5 felony. Pursuant to § 18.2-308.2:2, only licensed firearms dealers currently must obtain verification on purchasers prior to selling or transferring a firearm. The 2016 General Assembly added § 54.1-4201.2 to provide for voluntary background checks for firearm transfers by private vendors (i.e., other than licensed firearm dealers) at gun shows.

Analysis:

Existing data sources do not contain sufficient detail to estimate the number of firearm transfers that would require completion of a criminal history background check under the proposal or how many additional misdemeanor or felony convictions may result. However, individuals convicted of a felony for

making a false statement on the consent form under the proposed requirements may be sentenced similarly to those convicted under the existing provisions of § 18.2-308.2:2(K). According to fiscal year (FY) 2018 and FY2019 Sentencing Guidelines data, there were 233 felony convictions under § 18.2-308.2:2(K) for making false statements on the criminal history consent form. This was the primary, or most serious, offense in 224 of the cases. The majority (79%) of these offenders did not receive an active term of incarceration to serve after sentencing. Another 16.1% of the offenders received a local-responsible (jail) term, for which the median sentence was six months. The remaining 4.9% were sentenced to a state-responsible (prison) term. For offenders committed to prison, the median sentence length was 1.6 years.

Offenders convicted of the proposed Class 1 misdemeanor who accumulate three or more weapon convictions could be found guilty of a Class 6 felony under § 18.2-311.2. A review of FY2014-FY2019 Circuit Court Case Management System data for all felony convictions resulting from a third or subsequent misdemeanor weapon violation revealed that, during the six-year period, four offenders were convicted of such a felony. The felony violation of § 18.2-311.2 was the primary, or most serious, offense in three of the cases. However, none of these offenders received a state-responsible (prison) sentence.

Impact of Proposed Legislation:

State adult correctional facilities. Because it expands the circumstances in which an individual must submit a criminal history consent form, the proposal may result in additional felony convictions for making a false statement on the form. In this way, 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 bed space needs cannot be quantified.

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 § 18.2-308.2:2(K) are covered by the current sentencing guidelines. No adjustment to the guidelines would be 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 cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 854 of the 2019 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.