Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 240

(Patron – Barker)

LD#: 20103425 **Date:** 12/23/2019

Topic: Possession of firearms by certain individuals

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 establishes a procedure by which an attorney for the Commonwealth or a law enforcement officer may petition the court for an order to prohibit an individual from purchasing, possessing or transporting a firearm. Under the proposal, if a judge or magistrate finds probable cause to believe that the person poses a substantial risk of personal injury to himself or others in the near future, the judge or magistrate must issue an emergency substantial risk order to prohibit the person from purchasing, possessing or transporting a firearm for the duration of the order. Proceedings in which an emergency substantial risk order is sought may be commenced where the person who is subject to the order (i) has his principal residence, or (ii) has engaged in any conduct upon which the petition for the order is based. A court hearing must be held within 14 days of the issuance of the order to determine whether a substantial risk order should be issued for a period of up to 180 days. The proposal also provides that persons who are subject to a substantial risk order are disqualified from obtaining a concealed handgun permit; if the person already possesses such a permit, it must be surrendered. The proposal creates a computerized substantial risk order registry for the entry of orders.

Under the proposal, any person who knowingly and willfully makes any materially false statement or representation to a law enforcement officer or attorney for the Commonwealth as a part of the investigation would be guilty of a Class 1 misdemeanor. The proposal adds § 18.2-308.1:6 specifying that any person who purchases, possesses or transports a firearm while subject to a substantial risk order is guilty of a Class 1 misdemeanor. Pursuant to § 18.2-311.2, a third or subsequent Class 1 misdemeanor firearm 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 expands the applicability of several existing felony offenses to include offenders prohibited by § 18.2-308.1:6 from purchasing, possessing or transporting a firearm due to a substantial risk order. Under

the proposed modifications to § 18.2-308.2:1, for instance, individuals who sell, barter, give, or furnish a firearm to a person who is prohibited from possessing a firearm under the proposed § 18.2-308.1:6 would be guilty of a Class 4 felony. Also, additional individuals would be ineligible to receive a firearm from a licensed firearms dealer. Currently, under § 18.2-308.2:2(M), purchasing a firearm with the intent to transfer it to an individual who is ineligible to purchase a firearm from a dealer is a Class 4 felony that carries a mandatory minimum term of one year. Offenders who transfer more than one firearm in violation of § 18.2-308.2:2(M) are subject to a mandatory minimum term of five years. Subsection N of § 18.2-308.2:2 makes it a Class 4 felony for any person ineligible to purchase or possess a firearm to solicit, employ, or assist any person in purchasing a firearm in violation of § 18.2-308.2:2(M); a violation of this subsection also carries a mandatory minimum of five years.

Under § 18.2-308.2:2(K), making a materially false statement on a consent form that is required to purchase a firearm from a licensed dealer is a Class 5 felony. The proposal would amend the Virginia consent form to add a question regarding whether the applicant is subject to a substantial risk order under the proposed provisions. An individual making a materially false statement in response to this question would be subject to conviction for a Class 5 felony.

Analysis:

Existing data sources do not contain sufficient detail to predict how many additional Class 1 misdemeanor convictions for making a false statement to a law enforcement officer or Commonwealth's attorney may result from the proposal's enactment. However, affected offenders may be sentenced similarly to those who are currently convicted under § 18.2-460. According to General District Court Case Management System (CMS) data for fiscal year (FY) 2014 through FY2019, 1,441 individuals were convicted of a Class 1 misdemeanor under § 18.2-460 for making a false statement to a law enforcement officer conducting an investigation of another person's crime. Almost three-fourths (69.6%) of these offenders did not receive an active term of incarceration to serve after sentencing. The remaining 30.4% received a local-responsible (jail) term for which the median sentence was approximately 20 days.

Similarly, current data sources do not contain sufficient information to estimate how many additional convictions may result from other aspects of the proposal. Affected offenders may be sentenced similarly to those who are currently convicted under existing felony provisions (see table below).

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.

Offenders Convicted of Select Felony Firearm Offenses, FY2018-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
Sell, give, etc., firearm to ineligible person (§ 18.2-308.2:1)	8	62.5%	37.5%	6 months	N/A	N/A
False statement on firearm consent form (§ 18.2-308.2:2(K))	224	79%	16.1%	6 months	4.9%	1.6 years
Dealer sell/transfer firearm in violation of section (§ 18.2-308.2:2(L))	0	N/A	N/A	N/A	N/A	N/A

Offenders Convicted of Select Felony Firearm Offenses, FY2018-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
Solicit, etc., dealer to transfer firearm to another (§ 18.2-308.2:2(L1))	2	50%	N/A	N/A	50%	1.0 year
Provide > 1 firearm to ineligible person (§ 18.2-308.2:2(M))	0	N/A	N/A	N/A	N/A	N/A
Purchase firearm to provide to ineligible person (§ 18.2-308.2:2(M,i))	3	100%	N/A	N/A	N/A	N/A
Transport firearm out of state to provide to ineligible person (§ 18.2-308.2:2(M,ii))	0	N/A	N/A	N/A	N/A	N/A
Solicit violation of § 18.2-308.2:2(M) (§ 18.2-308.2:2(N))	3	33.3%	N/A	N/A	66.7%	6.8 years
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))	0	N/A	N/A	N/A	N/A	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), FY2018-FY2019 and Virginia Criminal Sentencing Commission - Sentencing Guidelines Database, FY2018-FY2019

Impact of Proposed Legislation:

State adult correctional facilities. Offenders convicted of the proposed Class 1 misdemeanor offense under § 18.2-308.1:6 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. Therefore, this portion of the 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.

However, by expanding the applicability of other existing felony offenses, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing data do not provide sufficient detail to estimate the number of new felony convictions that would result from enactment of the proposal. Therefore, the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. By creating a new Class 1 misdemeanor offense, expanding a current Class 1 misdemeanor offense, and expanding certain 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. Felony violations of § 18.2-308.2:2(K) are covered by the sentencing guidelines. Felony convictions under the other affected sections of the *Code* 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 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.

firearm68_3425