



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 436 (Patron – Surovell)

LD#: 20100159

Date: 12/10/2019

Topic: Virginia Voluntary Do Not Sell Firearms List

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 amends §§ 18.2-308.09, 18.2-308.2:1, 18.2-308.2:2 and 18.2-308.2:3 and adds § 18.2-308.1:6 to the *Code of Virginia*, relating to the possession by and sale of firearms to any person who voluntarily enrolls in a program to restrict their rights to have access to firearms. Also, Chapter 12 is added to Title 52 of the *Code* to establish the Virginia Voluntary Do Not Sell Firearms List (the List). The proposal makes it a Class 3 misdemeanor (punishable by a fine up to \$500) for anyone on the List to purchase, possess or transport a firearm. The proposal disqualifies any person enrolled on the List from obtaining a concealed handgun permit and prohibits the person from being employed by a firearms dealer. It would be a Class 1 misdemeanor under § 18.2-308.2:1 to sell, give, or furnish a firearm to any person who is known to be enrolled on the List.

Under the proposed modifications to § 18.2-308.2:2, individuals on the List would be ineligible to receive a firearm from a licensed firearms dealer. A dealer who willfully and intentionally sells or transfer a firearm to a person on the List would be guilty of a Class 6 felony. 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, including any person on the List, to purchase or possess a firearm or 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 term of five years. Any dealer who employs a person on the List and falsely affirms that the individual is not disqualified by federal or state laws from employment as a gun dealer would be subject to perjury, a Class 5 felony.

Analysis:

Eight states have proposed similar legislation to reduce suicides by firearms. In 2018, the Washington State Legislature created a non-court process to allow a person to voluntarily waive firearm rights and to later revoke that waiver. As of October 2019, ten months after the legislation went into effect, only eight people were registered.¹

Existing data sources do not contain sufficient detail to estimate how many additional misdemeanor or felony convictions may result from the proposal. However, affected offenders may be sentenced similarly to those who are currently convicted of a felony under the existing provisions (see table below).

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 revealed that, during the six-year period, four offenders were convicted of a felony under this provision. The felony violation of § 18.2-311.2 was the primary, or most serious, offense in three of the cases. None of these 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
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
Solicit, etc., dealer to transfer firearm to another (§ 18.2-308.2:2(L1))	2	50%	0%	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%	0%	N/A	0%	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%	0%	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 most serious 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

¹ www.thetrace.org, An Innovative Tool for Reducing Gun Suicides Is Fizzling in Washington State, October 7, 2019.

Impact of Proposed Legislation:

State adult correctional facilities. Offenders convicted of the proposed Class 1 misdemeanor offense under §§ 18.2-308.2:1 could, in the future, be convicted of a Class 6 felony under § 18.2-311.2 if they accumulate three or more firearm 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 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 convictions under the affected sections of the *Code* are not 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 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.