



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 70 Amendment in the Nature of a Substitute (Patrons Prior to Substitute – Lucas and Saslaw)

LD#: 20105589

Date: 1/13/2020

Topic: Criminal history checks for firearm sales

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 several sections of the *Code of Virginia* and adds § 18.2-308.2:5 to expand criminal history record information check requirements for certain firearm transactions. The proposal also contains technical amendments.

Currently, pursuant to § 18.2-308.2:2, only licensed firearms dealers must obtain verification on purchasers prior to selling or transferring a firearm. Moreover, existing § 54.1-4201.2 includes voluntary background checks for firearm transfers by private vendors (i.e., other than licensed firearm dealers) at gun shows. Under the proposed § 18.2-308.2:5, a criminal history record information check would be required for all firearms sales (this would not include trades, rentals or other sorts of transfers). No sale could take place unless the Department of State Police verifies that the prospective purchaser is not prohibited from possessing a firearm or that the sale is specifically exempted by state or federal law. Provisions of § 18.2-308.2:2 regarding criminal history record checks would apply mutatis mutandis to the new process.

Under the proposal, it would be a Class 1 misdemeanor for anyone to sell a firearm without obtaining verification from a designated licensed dealer. Furthermore, under the proposed, anyone who receives a firearm from another person without obtaining the required verification would be guilty of a Class 1 misdemeanor.

In addition, the proposal would expand requirements relating to record checks for firearm purchases by adding a question on the state's form asking if the prospective buyer has been the subject of a temporary

detention order under § 37.2-809 and subsequently agreed to a voluntary admission pursuant to § 37.2-805. A proposed amendment to § 18.2-308.2:2(B.2) extends the delay period—from the next business day to the third business day—for licensed dealers to complete transfers in which the record check is pending State Police response. The proposed § 18.2-308.2:2(C) outlines eligibility and identification requirements for dual residents of Virginia and another state to engage in legal firearm transfers.

In effect, the proposal would expand the applicability of several existing offenses. It is a Class 2 misdemeanor under § 18.2-308.2:2(F) for dealers to obtain criminal history information under false pretenses or to unlawfully disseminate such information. 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. Pursuant to § 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 term of five years.

Analysis:

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.

Existing data sources do not contain sufficient detail to estimate the number of firearm sales 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 under the proposed requirements may be sentenced similarly to those convicted under the existing provisions of § 18.2-308.2:2 (see table below).

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
False statement on firearm consent form (§ 18.2-308.2:2(K))	224	79%	16.1%	6 months	4.9%	1.6 years
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

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

By expanding existing felony offenses, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, 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 (except subsection K) under § 18.2-308.2:2 and the proposed § 18.2-308.2:5 are not covered by the sentencing guidelines when one of these offenses is the primary, or most serious, in a case. 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 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.