



## Fiscal Impact Statement for Proposed Legislation

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### Virginia Criminal Sentencing Commission

#### House Bill No. 1195 (Patron – Hayes)

**LD#:** 24104388

**Date:** 01/04/2024

**Topic:** Sale or purchase of firearms; waiting period

#### 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:**  
None (\$0)\*\*
- **Juvenile Detention Facilities:**  
None (\$0)\*\*

\*\* 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 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

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#### Summary of Proposed Legislation:

The proposed legislation amends §§ 18.2-308.2:2 and 18.2-308.2:5 of the *Code of Virginia* to provide that no firearms dealer or any other person shall sell a firearm unless at least five days have elapsed from the time the prospective purchaser completes the written consent form to have a licensed dealer obtain criminal history record information, with certain exceptions.

Currently, under § 18.2-308.2:2(B2), if a firearms dealer requests a criminal history background check from the Virginia State Police for a prospective buyer, as required by this section, and the dealer is told by the State Police that a response will not be available by the end of the fifth business day, the dealer may immediately complete the sale or transfer and will not be deemed in violation of the requirements of this section. Pursuant to subsection L, it is a Class 6 felony for a dealer to sell or transfer a firearm in violation of the provisions of § 18.2-308.2:2.

Currently, under § 18.2-308.2:5(C), any person who willfully and intentionally sells a firearm to another person without obtaining verification from a licensed dealer that information on the prospective purchaser has been submitted for a criminal history record information check as set out in § 18.2-308.2:2, and that a determination has been received that the prospective purchaser is not prohibited under state or federal law from possessing a firearm, is guilty of a Class 1 misdemeanor. Under § 18.2-308.2:5(D), any person who willfully and intentionally purchases a firearm from another person without verification is also 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.

### Analysis:

Existing databases do not provide sufficient detail to identify the number of new convictions likely to result from enactment of the proposal. Information pertaining to offenders convicted under existing provisions can be found in the table below.

#### **Offenders Convicted of Select Firearm Offenses, FY2018-FY2023**

<b>Primary Offense</b>	<b>Total Number of Cases</b>	<b>Percent Sentenced to Probation</b>	<b>Percent Sentenced to Jail</b>	<b>Median Jail Sentence</b>	<b>Percent Sentenced to Prison</b>	<b>Median Prison Sentence</b>
Sell or purchase firearm without required criminal history record check (§ 18.2-308.2:5) – Class 1 misd. <sup>1</sup>	23	78.3%	21.7%	2.3 mos.	N/A	N/A
Third or subsequent misd. firearm violation (§ 18.2-311.2) – Class 6 felony <sup>2</sup>	3	N/A	N/A	N/A	100.0%	1.3 yrs.
Dealer sell/transfer firearm in violation of § 18.2-308.2:2 (§ 18.2-308.2:2(L)) – Class 6 felony <sup>2</sup>	0	N/A	N/A	N/A	N/A	N/A

Note: Analysis is based on cases in which the specified offense was the primary, or most serious, offense at sentencing.

<sup>1</sup>Source: Supreme Court of Virginia - General District Court Case Management System (CMS), FY2018-FY2023

<sup>2</sup>Source: Supreme Court of Virginia - Circuit Court Case Management System (CMS), FY2018-FY2023

### Impact of Proposed Legislation:

**State adult correctional facilities.** By expanding the applicability of existing Class 6 felonies, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth.<sup>1</sup> However, available data do not provide sufficient detail to estimate the number of new felony convictions that may result from the proposal. Therefore, the magnitude of the impact on prison bed space needs cannot be determined.

**Local adult correctional facilities.** By expanding the applicability of existing felony and misdemeanor offenses, the proposal may increase local-responsible (jail) bed space needs. Because the number of new convictions resulting from the proposal cannot be determined, the magnitude of the impact on jail beds cannot be estimated.

**Adult community corrections programs.** 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 that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

<sup>1</sup> Under current law, felony offenses defined in §§ 18.2-308.2:2(L) and 18.2-311.2 are eligible for the enhanced sentence credits specified in § 53.1-202.3, whereby offenders will serve a minimum of 67% of the sentence ordered by the court. The proposed legislation does not change the earned sentence credits available to offenders convicted of these felonies.

**Virginia's Sentencing Guidelines.** The affected offenses are not covered by the Sentencing Guidelines as the primary, or most serious, offense in a case. A conviction for one of these crimes, however, could augment the Guidelines recommendation (as an additional offense) if the most serious offense at sentencing is covered by the Guidelines. Felony offenses in §§ 18.2-308.2:2(L) and 18.2-311.2 are not defined as violent under § 17.1-805(C) for the purposes of the Guidelines. No adjustment to the Guidelines would be necessary under the proposal.

**Juvenile direct care.** According to the Department of Juvenile Justice, the proposal is not expected to impact direct care (juvenile correctional center or alternative commitment placement) bed space needs.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal is not expected to impact the bed space needs of juvenile detention facilities.

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**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 1 of the Acts of Assembly of 2023, Special Session I, 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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

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