



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1306 Amendment in the Nature of a Substitute (Patron Prior to Substitute –Simon)

LD#: 22105993

Date: 02/04/2022

Topic: Remove, alter, etc., serial number on a firearm

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)*
- **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

* 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.

Summary of Proposed Legislation:

The proposed legislation amends § 18.2-311.1 of the *Code of Virginia* relating to removing or altering the serial number on a firearm. The proposal makes it a Class 1 misdemeanor for any person, firm, association, or corporation to knowingly possess a firearm that has a serial number that has been removed, altered, changed, destroyed, or obliterated in any manner. The bill also makes it a Class 1 misdemeanor for any person, firm, association, or corporation to sell, give, or distribute any firearm with a serial number that has been removed, altered, changed, destroyed, or obliterated in any manner.

Currently, under § 18.2-311.1, any person, firm, association, or corporation who or which intentionally removes, alters, or defaces (or causes to be removed, altered, or defaced) the name of the maker, model, serial number, or any other mark or identification on a firearm is guilty of a Class 1 misdemeanor.

Individuals convicted of certain Class 1 misdemeanor weapons offenses who accumulate three or more such convictions may be found guilty of a Class 6 felony under § 18.2-311.2.

Analysis:

Existing data sources do not contain sufficient detail to estimate the number of new convictions that may result from the proposal's enactment.

According to the General District Court CMS data for FY2016 through FY2021, a misdemeanor conviction for violating § 18.2-311.1 was the primary, or most serious, offense in 28 cases sentenced

during this time period. Eleven offenders (39.3%) did not receive an active term of incarceration to serve after sentencing. The remaining offenders (60.7%) received local-responsible (jail) terms with a median sentence of approximately 15 days.

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. According to the Circuit Court Case Management System (CMS) data for fiscal year (FY) 2016 through FY2021, two offenders were convicted of a felony under § 18.2-311.2 for a third or subsequent weapon offense. The felony violation of § 18.2-311.2 was not the primary, or most serious, offense in either case. One offender, whose primary offense was possession of a firearm by a convicted felon, received a state-responsible (prison) sentence of four years (two years for the primary offense and two years for the third or subsequent weapon offense). The remaining offender, whose primary offense was attempted robbery, was not sentenced to an active term of incarceration.

Impact of Proposed Legislation:

State adult correctional facilities. Offenders convicted of the Class 1 misdemeanor offense under the proposed § 18.2-311.1 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 has been convicted of a felony under § 18.2-311.2 as the primary (or most serious) offense at sentencing (i.e., in each case, the Class 6 felony conviction under § 18.2-311.2 accompanied a more serious felony offense). Therefore, the proposal is not expected to impact 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.

Local adult correctional facilities. By defining new misdemeanor offenses and expanding the applicability of an existing felony, the proposal may increase local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

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 community corrections resources. Since the number of cases that may be affected by the proposal cannot be determined, the potential impact on community corrections cannot be quantified.

Virginia's Sentencing Guidelines. Felony convictions under § 18.2-311.2 are not covered by the Sentencing Guidelines when this offense is the primary (or most serious) offense. Convictions under the proposed § 18.2-311.1 also would not be covered. However, convictions under these statutes could augment the Guidelines recommendation (as additional offenses) 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 of the Code of Virginia, the estimated amount of the necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.