

Department of Planning and Budget

2022 Fiscal Impact Statement

1. Bill Number: SB643S2

House of Origin ☐ Introduced ☒ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Ebbin

3. Committee: Finance and Appropriations

4. Title: Removing, altering, etc., serial number on firearm; selling, giving, etc., or possessing firearm.

5. Summary: The proposed legislation adds “any other identification required by federal law” to identifying markers of specified firearms which it is unlawful for any person, firm, association or corporation to intentionally remove, alter, change, destroy, or obliterate, in any manner or way, the violation of which is a Class 1 misdemeanor. The proposed legislation also makes it a Class 1 misdemeanor for any person, firm, association, or corporation to knowingly possess any pistol, shotgun, rifle, machine gun, or any other 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 6 felony for any person, firm, association, or corporation to knowingly sell, give, or distribute any pistol, shotgun, rifle, machine gun, or other firearm that has a serial number that has been removed, altered, changed, destroyed, or obliterated in any manner. The proposed legislation also establishes that this section shall not apply to antique firearms as defined in § 18.2-308.2:2.

6. Budget Amendment Necessary: Yes, Item 404.

7. Fiscal Impact Estimates: Preliminary (see Item 8 below).

8. Fiscal Implications: 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.

According to data collected and reviewed by the Virginia Criminal Sentencing Commission from 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 data collected and reviewed by the Virginia Criminal Sentencing Commission from the Circuit Court Case Management System (CMS) data for fiscal year (FY) 2016 through FY 2021, 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.

By creating a new Class 6 felony and expanding the applicability of an existing Class 6 felony, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, the Virginia Criminal Sentencing Commission states that existing data sources do not contain sufficient detail to estimate the number of new convictions that may result from the proposal's enactment. Therefore, the fiscal impact cannot be determined.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 552, 2021 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

The proposed legislation may also increase the local-responsible jail bed space needs. However, there is not enough information available to reliably estimate the increase in jail population as a result of this proposal. Nevertheless, any increase in jail population would increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail and \$12.00 a day for each state-responsible prisoner. It also funds a considerable portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2021), the estimated total state support for local jails averaged \$37.58 per inmate, per day in FY 2020.

Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail and a fine of not more than \$2,500, either or both. However, there is not enough information available to reliably estimate the increase in jail population as a result of this proposal. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail. It also funds a large portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2021), the estimated total state support for local jails averaged \$37.58 per inmate, per day in FY 2020. While there may be a reduction in the number of individuals sent to jail, due to the elimination of mandatory minimum sentence for certain persons, that impact is indeterminate.

9. Specific Agency or Political Subdivisions Affected: Department of Corrections, Local and regional jails, law enforcement agencies, Courts, Commonwealth's Attorneys, and Public Defenders Offices.

10. Technical Amendment Necessary: No.

11. Other Comments: None.