



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 323

As Engrossed

(Patrons Prior to Engrossment – Favola and Howell)

LD#: 16103476

Date: 2/3/2016

Topic: Protective orders; firearm restrictions

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
Cannot be determined *
 - **Juvenile Detention Facilities:**
Cannot be determined *
- * Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposed legislation amends § 18.2-308.1:4, regarding firearm restrictions for persons subject to protective orders. Currently, under § 18.2-308.1:4, it is a Class 1 misdemeanor for any person subject to a protective order to purchase or transport firearms during the period the order is in effect. The proposal would narrow this prohibition to only apply to individuals who have been served with a protective order.

In addition, the proposal would prohibit individuals who have been served with an emergency protective order issued pursuant to § 18.2-57.2(C) from physically possessing a firearm while in the residence of the alleged victim. This offense would be punishable as a Class 1 misdemeanor. Pursuant to § 18.2-311.2, a third or subsequent Class 1 misdemeanor weapons violation (defined in Article 4, 5, 6, or 7 of Chapter 7 of Title 18.2) is punishable as a Class 6 felony.

Analysis:

According to the Supreme Court of Virginia, a total of 71,489 protective orders were granted in calendar year 2014 (this figure includes emergency protective orders, preliminary protective orders, and protective orders). Available data do not contain sufficient detail to determine the number of new convictions likely to result from the amended firearms restrictions. However, individuals who violate the proposed firearm prohibitions may be sentenced similarly to those who are currently convicted of a misdemeanor under § 18.2-308.1:4 for unlawfully purchasing or transporting a firearm while subject to a protective order.

According to the General District Court Case Management System (CMS) for fiscal year (FY) 2014 and FY2015, there were 104 misdemeanor convictions under § 18.2-308.1:4 for purchasing or transporting a firearm while subject to a protective order. Nearly two-thirds (63.5%) of these offenders did not receive

an active term of incarceration to serve after sentencing. The remaining 36.5% were sentenced to local-responsible (jail) terms, with a median sentence of approximately 22 days.

Offenders convicted under § 18.2-308.1:4 who accumulate three or more weapon convictions could be found guilty of a Class 6 felony under § 18.2-311.2. A review of FY2010-FY2015 Circuit Court CMS data for all felony convictions 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.

Impact of Proposed Legislation:

State adult correctional facilities. Offenders convicted under § 18.2-308.1:4 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 convicted of a felony under § 18.2-311.2 has received a state-responsible (prison) sentence. Therefore, 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.

Local adult correctional facilities. The proposal may impact local-responsible (jail) bed space needs. However, the magnitude of the impact on jail beds cannot be estimated.

Adult community corrections programs. The proposal could result in convictions and subsequent supervision requirements for an additional number of offenders and this may increase the need for local and/or state community corrections resources. The number of new convictions likely to result from the proposal cannot be determined; therefore, the potential impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. Felony convictions under § 18.2-311.2 are not covered by the sentencing guidelines as the primary offense when this offense is the primary, or most serious, offense in a case. A conviction under this provision, 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 correctional centers. According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional center 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 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.

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