



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 49 (Patrons – Howell; Delegates: Kory and Simon)

LD#: 16100702

Date: 12/15/2015

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 expands §§ 18.2-308.09 and 18.2-308.1:4, regarding firearm restrictions for persons subject to protective orders. Under the proposal, an individual subject to a protective order would be prohibited from possessing any firearm while the order is in effect. Currently, under § 18.2-308.1:4, persons subject to protective orders may not purchase or transport firearms during the period the order is in effect. The proposal also disqualifies individuals subject to a protective order from obtaining a concealed handgun permit under § 18.2-308.09.

Purchasing or transporting a firearm while subject to a protective order in violation of § 18.2-308.1:4 is a Class 1 misdemeanor. The proposal expands this offense to include possessing a firearm while a protective order is in effect. 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:

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 expanded firearms restrictions. However, individuals who violate the proposed firearm prohibition 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 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. 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. Additional offenders convicted of the expanded Class 1 misdemeanor offense 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. By expanding an existing Class 1 misdemeanor offense, 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. 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 (JCC) 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.