



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2504

(Patron – Murphy)

LD#: 19103833

Date: 1/4/2019

Topic: Protective orders; firearm restrictions

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:**
Cannot be determined **
- **Juvenile Detention Facilities:**
Cannot be determined **

** 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 2 of the Acts of Assembly of 2018, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposed legislation amends § 18.2-308.1:4 of the *Code of Virginia*, relating to the possession of firearms by persons subject to certain protective orders. Currently, under § 18.2-308.1:4(B), it is a Class 6 felony for a person subject to a protective order issued pursuant to § 16.1-279.1, related to cases of family abuse, to knowingly possess a firearm. This felony was enacted in 2016. The proposal would expand the Class 6 felony defined in § 18.2-308.1:4(B) to prohibit persons subject to a protective order issued pursuant to § 19.2-152.10, related to the health and safety of a petitioner and their family or household members, from knowingly possessing a firearm.

The proposal also requires any person who is prohibited from possessing a firearm because he is subject to a protective order issued under § 16.1-279.1 or § 19.2-152.10, or a substantially similar order issued in another jurisdiction, to certify in writing within 48 hours of being served with the order that any firearm in his possession has been sold or transferred. Any person who fails to file a certification as required would be guilty of a Class 1 misdemeanor.

Analysis:

According to the Office of the Executive Secretary (OES) of the Supreme Court of Virginia, in calendar year 2017, a total of 5,390 protective orders were entered pursuant to § 16.1-279.1, while a total of 2,978 protective orders were entered pursuant to § 19.2-152.10.

The existing Class 6 felony defined under § 18.2-308.1:4 for possessing a firearm while subject to a protective order issued under § 16.1-279.1 became effective on July 1, 2016. According to Circuit Court

Case Management System (CMS) data for FY2017 and FY2018, 11 individuals were convicted of this Class 6 felony during the two-year period. This offense was the primary, or most serious, offense in eight cases. Of these eight offenders, two (25%) received a state-responsible (prison) sentence of 1 year and 2.3 years, respectively. Three (37.5%) of the offenders received a local-responsible (jail) term for which the median sentence was three months. The remaining three offenders (37.5%) did not receive an active term of incarceration to serve after sentencing. Available data do not contain sufficient detail to determine the number of new felony convictions that may result if § 18.2-308.1:4(B) were expanded to include protective orders issued under § 19.2-152.10.

Similarly, existing databases do not provide sufficient detail to estimate the number of misdemeanor convictions for failing to file a certification that may result from enactment of the proposal. However, offenders convicted of the proposed Class 1 misdemeanor who accumulate three or more firearm convictions could be found guilty of a Class 6 felony under § 18.2-311.2. A review of fiscal year (FY) 2013 through FY2018 Circuit Court Case Management System (CMS) data for all felony convictions under § 18.2-311.2 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. By expanding the applicability of an existing felony, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Available data do not provide sufficient detail to estimate the number of new felony convictions that may result from enactment of the proposal; therefore, the magnitude of the impact on prison bed space needs cannot be determined. Furthermore, offenders convicted of the proposed 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 misdemeanor 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, this aspect of the proposal is not expected to have an impact on the 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 the applicability of an existing felony and creating a new Class 1 misdemeanor, 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 felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for state 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 §§ 18.2-308.1:4 and 18.2-311.2 are not covered by the sentencing guidelines as the primary offense. Convictions under these provisions, 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 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, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2018, 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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