



## Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

### Senate Bill No. 1467 (Patrons – Saslaw and Howell)

LD#: 19103735

Date: 1/8/2019

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 surrender or transfer of firearms by 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 a firearm during the period the order is in effect. Also, under this provision, any person with a concealed handgun permit is prohibited from carrying a concealed firearm for the duration of the protective order and must surrender his permit to the court during that time period. The 2016 General Assembly amended § 18.2-308.1:4 to prohibit persons subject to a protective order issued pursuant to § 16.1-279.1, related to cases of family abuse, from knowingly possessing a firearm; violation of this specific subsection is a Class 6 felony.

The proposal would expand the Class 6 felony defined in § 18.2-308.1:4 (B) to prohibit persons subject to a protective order 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.

In addition, the proposal would require a court to order a person subject to a protective order issued under § 16.1-279.1 or § 19.2-152.10 to, within 24 hours, surrender any firearm in his possession to a designated local law-enforcement agency, sell or transfer any firearms in possession to a dealer, or sell or transfer any firearms in possession to any person who is not otherwise prohibited by law from possessing firearms. Alternatively, the person subject to such a protective order may certify in writing that he does not possess any firearm or rifle within 48 hours after being served with the order. The proposal specifies that within 48 hours after surrendering, selling, or transferring all firearms, such person must certify in writing that all firearms in possession have either been surrendered, sold, or transferred and file such certification with the clerk of the court that entered the protective order. Any person who fails to certify such requirement would

be guilty of a Class 1 misdemeanor. The proposal also provides that any person who buys or has a firearm transferred to him as provided in subsections B or C of § 18.2-308.1:4, and who allows the person subject to the protective order to exert any influence or control over the sold or transferred firearm is guilty of a Class 1 misdemeanor.

The proposal would also establish procedures for designating a local law-enforcement agency to receive and store firearms as well as a process to return surrendered firearms. It also specifies that for the purpose of designating a local law-enforcement agency to receive and store firearms, the chief judge of the circuit court shall coordinate with the local law-enforcement agencies within the judicial circuit to determine which agencies have the capacity to receive and store firearms.

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**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 in § 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 time 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.

Existing databases do not provide sufficient detail to identify the number of new misdemeanor convictions likely to result from enactment of the proposal. However, offenders convicted of the proposed Class 1 firearm misdemeanors 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.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By expanding an existing Class 6 felony, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, 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 impact of this portion of the proposal on prison bed space needs cannot be determined.

In addition, offenders convicted of the proposed Class 1 misdemeanor offenses 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 portion 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 an existing felony and creating two new Class 1 misdemeanors, 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 sections, 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.

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**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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