

Department of Planning and Budget

2020 Fiscal Impact Statement

1. Bill Number: SB240 ES3

House of Origin	<input type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input checked="" type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: Barker

3. Committee: Committee on the Judiciary

4. Title: Firearms; removal from persons posing substantial risk; penalties.

5. Summary: Under the proposed legislation, a Commonwealth's Attorney or law enforcement officer may obtain an emergency substantial risk order from any general district, circuit, or juvenile and domestic relations court judge or magistrate to prohibit a person who poses a substantial risk of personal injury to himself or others from purchasing, possessing, or transporting a firearm. If an emergency substantial risk order is issued, a judge or magistrate may issue a search warrant to remove firearms from the individual. A court hearing must be held within 14 days of the issuance of the order to determine whether a substantial risk order should be issued for a period of up to 180 days. The proposal also provides the following:

- That persons who are subject to a substantial risk order are disqualified from obtaining a concealed handgun permit; if the person already possesses such a permit, it must be surrendered. A violation of this section is Class 1 misdemeanor.
- Any firearm taken into custody pursuant to an order issued must be returned by a law-enforcement agency to the person from whom the firearm was taken upon a court order for the return of the firearm or the expiration or dissolution of the order within five days of receiving a written request for the return of the firearm by the individual.
- Any person who knowingly and willfully makes any materially false statement or representation to a law enforcement officer or attorney for the Commonwealth as a part of the investigation would be guilty of a Class 1 misdemeanor.
- A person who purchases, possesses, or transports a firearm while subject to an emergency substantial risk order is guilty of a Class 1 misdemeanor. A third or subsequent Class 1 misdemeanor firearm violation is punishable as a Class 6 felony.
- Additionally, the proposed legislation expands the applicability of several existing felony offenses to include offenders prohibited by § 18.2-308.1:6 from purchasing, possessing, or transporting a firearm due to an emergency substantial risk order.

- Under the proposed modifications, individuals who sell, barter, give, or furnish a firearm to a person who is prohibited from possessing a firearm would be guilty of a Class 4 felony.
- Individuals would be ineligible to receive a firearm from a licensed firearm dealer. Under current law, purchasing a firearm with the intent to transfer it to an individual who is ineligible to purchase a firearm from a dealer is a Class 4 felony that carries a mandatory minimum term of one year. Offenders who transfer more than one firearm are subject to a mandatory minimum term of five years. Currently, it is a Class 4 felony for any person ineligible to purchase or possess a firearm to solicit, employ, or assist any person in purchasing a firearm; a violation of this subsection also carries a mandatory minimum term of five years.
- The proposal would amend the Virginia consent form provided by Virginia State Police (VSP) to add a question regarding whether the applicant is subject to an emergency substantial risk order under the proposed provisions. An individual making a materially false statement in response to this question would be subject to conviction for a Class 5 felony.
- The proposed legislation establishes a procedure by which a law enforcement officer would take custody of any firearm that is in the person's possession or that is owned by the person who is subject to the order.
- It would require the VSP to keep and maintain a computerized Substantial Risk Order Registry (Registry) for the entry of such orders, and to make the Registry available to all law enforcement and criminal agencies through the Virginia Criminal Information Network (VCIN). The court or magistrate also must enter and transfer electronically to the Virginia Criminal Information Network (VCIN) the identifying information of the person who is subject to the order.

The substitute version of the bill requires an emergency substantial risk order issued pursuant to § 19.2-153.13, which is to expire at 11:59 on the fourteenth day following the issuance of the order, to state the initial hearing date. The substitute bill also establishes that a proceeding for a substantial risk order shall be a separate civil legal proceeding subject to the same rules as civil proceedings. Finally, the substitute bill allows, upon motion of the respondent and for good cause shown, the court to continue the hearing and, in such cases, requires the order to remain in effect until the hearing.

The engrossed bill permits a Commonwealth's Attorney or two law enforcement officers supported by an affidavit of supporting facts, after consulting with the attorney for the Commonwealth, to obtain an emergency substantial risk order from any general district, circuit, or juvenile and domestic relations court judge or magistrate to prohibit a person who poses a substantial risk of personal injury to himself or others from purchasing, possessing, or transporting a firearm.

The engrossed bill also removes references to search warrants for firearms possessed by those subject to emergency substantial risk orders and refers instead to voluntary

relinquishment of such firearms. The bill allows a law-enforcement officer to obtain search warrants for any firearms if such law-enforcement officer believes that the subject of the substantial risk order has not relinquished all firearms in his possession.

6. **Budget Amendment Necessary:** No. The Governor's Introduced Budget (HB30/SB30) includes \$542,886 in Item 425 (VSP) and \$50,000 in Item 402 (Department of Corrections) to accompany this legislation. There is also a proposed executive amendment to Item 406 (Department of Criminal Justice Services) of HB30/SB30 for \$500,000 to provide grants to localities to support local costs associated with this legislation.
7. **Fiscal Impact Estimates:** Preliminary. See Item 8 below.
8. **Fiscal Implications:** The proposed legislation would require VSP to create and maintain a Substantial Risk Order Registry (Registry) database that is to be available, upon request, to criminal justice agencies including local law-enforcement agencies through the Virginia Criminal Information Network (VCIN).

The bill also revises the statute governing background checks for firearm purchases by adding a question to the Virginia Firearms Transaction Record (SP-65) Form, which is completed by individuals at the time of a firearms purchase. This will require VSP to review and print the amended form and to mail it to firearms dealers, and to modify the electronic version of the form that is currently available to them.

Funding is included in HB30/SB30 for VSP to make required changes to VCIN and VSP's current firearms system (VCheck) and to revise the SP-65 Form.

This bill would expand the number of people who possibly could be convicted of a felony or misdemeanor. Therefore, this proposal could result in an increase in the number of persons sentenced to jail or prison.

There is not enough information available to estimate reliably how many additional inmates in jail could result from this proposal. Ultimately, the presiding judge will decide if there is to be any time served in jail; however, any increase in jail population will increase costs to the state. The Commonwealth presently pays localities \$4.00 a day for each misdemeanant or otherwise local responsible prisoner held in a jail and \$12.00 a day for each state responsible inmate. 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 2019), the estimated total state support for local jails averaged \$34.07 per inmate, per day in FY 2018.

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 854, 2019 Acts of Assembly, requires that a minimum impact of \$50,000 be assigned to the bill. The

impact on the Department of Juvenile Justice and local and regional jails could not be determined.

This bill is not expected to have a material impact on courts.

- 9. Specific Agency or Political Subdivisions Affected:** Department of State Police, Local law enforcement agencies, Courts, Department of Corrections, Department of Juvenile Justice, local and regional jails, Commonwealth Attorneys.

10. Technical Amendment Necessary: No

11. Other Comments: None