



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 827 (Patron – Minchew)

LD#: 14103460

Date: 1/10/2014

Topic: Temporary firearms restriction orders

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:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

Summary of Proposed Legislation:

The proposal adds § 37.2-808.1 to the *Code of Virginia* to establish a temporary firearms restriction for persons under an emergency custody order. Specifically, under the proposal, a magistrate who issues an emergency custody order pursuant to § 37.2-808 would be required to also issue a temporary firearms restriction order that temporarily prohibits the purchase, possession, or transportation of any firearm by the person. The duration of the order cannot exceed 90 days. Under the proposed § 18.2-308.1:6, any individual who is subject to this temporary firearms restriction who purchases, possesses, or transports a firearm would be guilty of a Class 1 misdemeanor. An individual who is subject to a temporary firearms restriction order could petition the court to restore his right prior to the expiration of such order. The proposal also modifies two statutes relating to the issuance and suspension of concealed handgun permits.

The proposal establishes a new Class 1 misdemeanor for purchasing, etc., a firearm while under an emergency custody order. Pursuant to § 18.2-311.2, a third or subsequent Class 1 misdemeanor firearm violation (defined in Article 4, 5, 6, or 7 of Chapter 7 of Title 18.2) is punishable as a Class 6 felony.

Analysis:

Existing databases do not provide sufficient detail to identify the number of new convictions likely to result from enactment of the proposal.

Offenders convicted of the affected Class 1 misdemeanor who accumulate three or more firearm convictions could be found guilty of a Class 6 felony under § 18.2-311.2. According to the Circuit Court Case Management System (CMS)¹ for fiscal year (FY) 2009 through FY2013, eight offenders were convicted of a felony under § 18.2-311.2 for a third or subsequent firearm offense. The felony firearm charge was the primary, or most serious, offense in four of the cases. While two of these offenders were given a local-responsible (jail) term, for which the median sentence was 1.7 months, the remaining two offenders did not receive an active term of incarceration to serve after sentencing.

¹ Formerly referred to as the Court Automated Information System (CAIS).

Impact of Proposed Legislation:

State adult correctional facilities. Offenders convicted of the proposed Class 1 misdemeanor offense under § 18.2-308.1:6 could, in the future, be convicted of a Class 6 felony under § 18.2-311.2 if they accumulate three or more firearm convictions. In the five 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 creating a new 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. 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, the proposal is not expected to increase juvenile correctional center bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

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 \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

firearm24_3460