



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 2328

(Patron – Simon)

LD#: 15100711

Date: 12/2/2014

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

\* 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 requires persons subject to protective orders to surrender all firearms to the court within 24 hours and specifies the process for a court to receive a surrendered firearm and to return it when the protective order expires. 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 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:

According to the Supreme Court of Virginia, a total of 70,023 protective orders were granted in calendar year 2013 (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) 2013 and

FY2014, there were 82 misdemeanor convictions under § 18.2-308.1:4. More than half (58.5%) of these offenders did not receive an active term of incarceration to serve after sentencing. The remaining 41.5% were sentenced to local-responsible (jail) terms with a median sentence of approximately 24 days.

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 FY2009-FY2014 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.

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**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 firearm 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. 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.

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**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.**