



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 912 (Patron – Wexton)

LD#: 15100551

Date: 11/26/2014

Topic: Emergency custody 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 adds § 37.2-808.1 to the *Code of Virginia* regarding temporary firearms restrictions for persons under an emergency custody order. The proposal provides that, upon the issuance of an emergency custody order pursuant to § 37.2-808, the issuing magistrate must also issue a temporary firearms restriction order prohibiting the purchase, possession, or transportation of any firearm by the person taken into custody. The order would expire 90 days from the date of issuance. 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. However, an individual prohibited from possessing a firearm under the proposal may petition the general district court in the city or county in which he resides to restore his right to purchase, possess, or transport a firearm.

The proposal also amends § 18.2-308.09 to disqualify any person subject to a temporary firearms restriction order, and prohibited by § 18.2-308.1:6 from purchasing, possessing, or transporting a firearm, from obtaining a concealed handgun permit. Under the amended § 18.2-308.013, the court would be required to suspend the existing concealed handgun permit of any individual who is subject to a temporary firearms restriction order issued pursuant to § 37.2-808.1 for the duration of such order.

Currently, under § 18.2-308.1:3, the purchase, possession or transportation of a firearm by a person involuntarily admitted to a mental health facility or ordered to mandatory outpatient treatment is punishable as a Class 1 misdemeanor. 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:

According to the Supreme Court of Virginia, magistrates issued 12,166 emergency custody orders (ECOs) in calendar year (CY) 2012 and CY2013.

Available data do not contain sufficient detail to determine the number of new convictions likely to result from enactment of the proposal. However, individuals who would violate the proposed firearm prohibition may be sentenced similarly to those who are currently convicted of a misdemeanor under § 18.2-308.1:3 for unlawfully possessing, etc., a firearm after having been involuntarily admitted to a mental health facility or ordered to mandatory outpatient treatment. According to the General District Court Case Management System (CMS) for fiscal year (FY) 2013 and FY2014, there were 125 misdemeanor convictions under § 18.2-308.1:3. The majority of these offenders (76%) did not receive an active term of incarceration to serve after sentencing. The remaining 24% were sentenced to local-responsible (jail) terms with a median sentence of approximately 13 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.

---

### **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 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 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.**