



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1313 (Patrons – Simon et al.)

LD#: 16104419

Date: 1/20/2016

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 amends §§ 18.2-308.07 and 18.2-308.1:4, regarding the possession of firearms by persons subject to protective orders and protected parties. 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. Under the proposed changes to § 18.2-308.1:4, a person protected by a protective order may, at the time the protective order is issued, request that the person subject to the protective order surrender any firearm in his possession. The proposal would require that any request made by the protected person be included as one of the conditions imposed by the protective order. The proposal also modifies § 18.2-308.1:4 to establish specific procedures for the surrender of firearms by certain subjects of protective orders. Currently, any violation of § 18.2-308.1:4 is a Class 1 misdemeanor. In addition, the proposal adds provisions to exempt persons protected by a protective order from the prohibition against carrying a concealed handgun (§ 18.2-308) if certain conditions are met.

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 failing to surrender a firearm under certain circumstances. Pursuant to § 18.2-311.2, a third or subsequent Class 1 misdemeanor weapon 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 71,489 protective orders were granted in calendar year 2014 (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) 2014 and FY2015, there were 104 misdemeanor convictions under § 18.2-308.1:4 for purchasing or transporting a firearm while subject to a protective order. Nearly two-thirds (63.5%) of these offenders did not receive an active term of incarceration to serve after sentencing. The remaining 36.5% were sentenced to local-responsible (jail) terms with a median sentence of approximately 22 days.

Offenders convicted of the proposed Class 1 misdemeanor who accumulate three or more weapon convictions could be found guilty of a Class 6 felony under § 18.2-311.2. A review of FY2010-FY2015 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. 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 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, 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 when this offense is the primary, or most serious, offense in a case. 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 (DJJ), 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.