



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 797 (Patron – Howell and Wexton)

LD#: 18104111

Date: 01/09/2017

Topic: Protective orders; firearm restrictions

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Direct Care:**
Cannot be determined **
 - **Juvenile Detention Facilities:**
Cannot be determined **
- ** Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 836 of the 2017 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposed legislation amends § 18.2-308.1:4 of the *Code of Virginia*, relating to the purchase or transport of firearms by persons subject to protective orders. Currently, under § 18.2-308.1:4, it is a Class 1 misdemeanor for any person subject to a protective order to purchase or transport a firearm during the period the order is in effect. The 2016 General Assembly amended § 18.2-308.1:4 to prohibit persons subject to a protective order issued pursuant to § 16.1-279.1, related to cases of family abuse, from knowingly possessing a firearm; violation of this subsection is a Class 6 felony.

The proposal would expand the Class 6 felony defined in § 18.2-308.1:4 (B) to prohibit persons subject to a protective order issued pursuant to § 19.2-152.10, related to the health and safety of a petitioner and their family or household members, from knowingly possessing a firearm.

Analysis:

According to the Supreme Court of Virginia, a total of 3,336 protective orders were entered pursuant to § 19.2-152.10, relating to the health and safety of a petitioner and their family or household members, in calendar year 2016. Available data do not contain sufficient detail to determine the number of new felony convictions likely to result from the proposed amendments to § 18.2-308.1:4.

The General District Court Case Management System (CMS) for fiscal year (FY) 2016 and FY2017 indicates that there were 87 misdemeanor convictions under § 18.2-308.1:4 for purchasing or transporting

a firearm while subject to a protective order. Nearly three-quarters (73.6%) of these offenders did not receive an active term of incarceration to serve after sentencing. The remaining 26.4% were sentenced to local-responsible (jail) terms with a median sentence of approximately one month.

The Class 6 felony in § 18.2-308.1:4 became effective on July 1, 2016. According to the Circuit Court Case Management System (CMS), two offenders were convicted of a felony for possessing a firearm while a permanent family abuse protective order (issued pursuant to § 16.1-279.1) was in effect. The firearm violation was the primary, or most serious, offense in these cases. One received a state-responsible (prison) sentence with a median term of 2.3 years and the other did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding an existing Class 6 felony, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, available data do not provide sufficient detail to estimate the number of new felony convictions that may result from enactment of the proposal. Therefore, the magnitude of the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal may also increase local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for state community corrections resources. Since the number of cases that may be affected by the proposal cannot be determined, the potential impact on community corrections cannot be quantified.

Virginia's sentencing guidelines. Felony convictions under § 18.2-308.1:4 are not covered by the sentencing guidelines when this offense is the primary, or most serious, offense in a case. However, convictions under this statute 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 direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 836 of the 2017 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.