



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 4009 (Patrons – Toscano, Convirs-Fowler et al.)

LD#: 19200149

Date: 7/3/2019

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 854 of the 2019 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. Also, under this provision, any person with a concealed handgun permit is prohibited from carrying a concealed firearm for the duration of the protective order and must surrender his permit to the court during that time period. 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 specific 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. The bill also provides that, within 48 hours after being served with the protective order, the subject of the order must certify in writing that any firearm possessed by such person has been sold or transferred and file such certification with the clerk of the court that entered the protective order. Failure to file the required certification would be a Class 1 misdemeanor.

Analysis:

According to the Office of the Executive Secretary (OES) of the Supreme Court of Virginia, in calendar year 2017, a total of 5,390 protective orders were entered pursuant to § 16.1-279.1, while a total of 2,978 protective orders were entered pursuant to § 19.2-152.10.

The Class 6 felony defined § 18.2-308.1:4 for possessing a firearm while subject to a protective order issued under § 16.1-279.1 became effective on July 1, 2016. According to Circuit Court Case Management System (CMS) data for FY2017 and FY2018, 11 individuals were convicted of this Class 6 felony during the two-year time period. This offense was the primary, or most serious, offense in eight cases. Of these eight offenders, two (25%) received a state-responsible (prison) sentence of 1 year and 2.3 years, respectively. Three (37.5%) of the offenders received a local-responsible (jail) term for which the median sentence was three months. The remaining three offenders (37.5%) did not receive an active term of incarceration to serve after sentencing. Available data do not contain sufficient detail to determine the number of new felony convictions that may result if § 18.2-308.1:4(B) were expanded to include protective orders issued under § 19.2-152.10.

The General District Court CMS data for FY2017 and FY2018 indicate that there were 100 misdemeanor convictions under § 18.2-308.1:4(A) for purchasing or transporting a firearm while subject to a protective order, etc. One-third (33%) of these offenders received local-responsible (jail) terms with a median sentence of approximately one month. The remaining two-thirds (67%) 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. By expanding an existing felony and creating a new Class 1 misdemeanor, 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 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 854 of the 2019 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.

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