

Department of Planning and Budget

2019 Special Session I Fiscal Impact Statement

1. Bill Number: HB4031

House of Origin	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: Miyares

3. Committee: Militia, Police and Public Safety

4. Title: Firearms; removal from persons under an emergency severe threat order of protection; penalties.

5. Summary: The legislation sets forth a procedure by which a law enforcement officer may petition the court for an order to prohibit an individual from purchasing, possession, or transporting a firearm. Under the bill, a law enforcement officer may petition the general district, circuit, or juvenile and domestic relations court in the jurisdiction where the subject resides for an emergency severe threat order of protection. If such an order is issued, the law enforcement officer is allowed to take the respondent into custody. If the respondent declines a court hearing on the matter, the law enforcement officer is required to transport the respondent to be evaluated for behavioral health issues by the local Community Services Board (CSB). The local CSB must complete the evaluation within 72 hours and must provide the results of the evaluation to the court. If the court finds by clear and convincing evidence that the respondent poses a significant danger of imminently causing death or serious physical injury to himself or others, the court must issue an emergency severe threat order of protection for up to 14 days. Any firearms owned by a respondent who is subject to an emergency severe threat order of protection must be transferred to a responsible custodian, to a local law enforcement agency, or to a firearms dealer licensed pursuant to 18 U.S.C § 921 et seq. within 24 hours of the order being issued. The proposal also provides the following:

- The bill provides that a person who is subject to an emergency severe threat order of protection, until such order has expired or been dissolved by a court, is guilty of a Class 1 misdemeanor for purchasing, possessing, or transporting a firearm; is disqualified from having a concealed handgun permit; and may not be employed by a licensed firearms dealer.
- Any firearm taken into custody pursuant to an order issued must be released by the law-enforcement agency within 24 hours after the receipt of the evidence that the order has expired or been dissolved or receipt of a court document evidencing that the person is not prohibited from possessing a firearm.
- Any person who knowingly and willfully makes any materially false statement or representation to a law enforcement officer or attorney for the Commonwealth as a part of an investigation is guilty of a Class 1 misdemeanor.

- A person who purchases, possesses, or transports a firearm while subject to an emergency severe threat order of protection is guilty of a Class 1 misdemeanor. A third or subsequent Class 1 misdemeanor firearm violation is punishable as a Class 6 felony.
- Additionally, the proposed legislation expands the applicability of several existing felony offenses to include offenders prohibited by § 18.2-308.1:6 from purchasing, possessing, or transporting a firearm due to an emergency severe threat order of protection.
- Under the proposed modifications, individuals who sell, barter, give, or furnish a firearm to a person who is prohibited from possessing a firearm would be guilty of a Class 4 felony.
- Individuals would be ineligible to receive a firearm from a licensed firearm dealer.
- The proposal would amend the Virginia consent form provided by Virginia State Police (VSP) to add a question regarding whether the applicant is subject to an emergency severe threat order of protection under the proposed provisions. An individual making a materially false statement in response to this question would be subject to conviction for a Class 5 felony.
- It would require the VSP to keep and maintain a computerized Emergency Severe Threat Order of Protection Registry (Registry) for the entry of such orders, and to make the Registry available to all law enforcement and criminal agencies through the Virginia Criminal Information Network (VCIN). The court or magistrate also must enter and transfer electronically to the VCIN the identifying information of the person who is subject to the order.

6. Budget Amendment Necessary: Yes. Items 391 and 419.

7. Fiscal Impact Estimates: Preliminary. (See Item 8 below).

8. Fiscal Implications:

Public Safety/Law Enforcement Impact

The proposed legislation would require VSP to create and maintain an Emergency Severe Threat Order of Protection Registry (Registry) database that is to be available, upon request, to criminal justice agencies including local law-enforcement agencies through the Virginia Criminal Information Network (VCIN).

The bill also revises the statute governing background checks for firearm purchases by adding a question to the Virginia Firearms Transaction Record (SP-65) Form, which is completed by individuals at the time of a firearms purchase. This will require VSP to review and print the amended form and to mail it to firearms dealers, and to modify the electronic version of the form that is currently available to them.

According to VSP, the proposed legislation would have an estimated fiscal impact on their operations of \$542,886. The funding would allow VSP to create the Firearms Order Registry for \$338,800; update VSP's current firearms system (VCheck) for \$80,000; contract with a vendor to update VCIN for \$110,000; and revise the SP-65 Form, for \$14,086.

Additionally, this bill would expand the number of people who possibly could be convicted of a felony or misdemeanor. Therefore, this proposal could result in an increase in the number of persons sentenced to jail or prison. Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 854 of the 2019 Acts of Assembly requires that a minimum impact of \$50,000 be assigned to the bill. The impact on the Department of Juvenile Justice and local and regional jails could not be determined.

There is not enough information available to estimate reliably how many additional inmates in jail could result from this proposal. The Commonwealth presently pays the localities \$4.00 a day for each misdemeanor or otherwise local responsible prisoner held in a jail and \$12.00 a day for each state responsible inmate. It also funds a considerable portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per-prisoner, per-day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2018), the estimated total state support for local jails averaged \$33.83 per inmate, per day in FY 2017.

Department of Behavioral Health and Developmental Services (DBHDS) Impact

This legislation will have an indeterminate impact on CSBs and could have an impact on state mental health facilities. This bill establishes a new process that is similar to the Emergency Custody Order (ECO)/Temporary Detention Order (TDO) process, whereby law enforcement can take custody of an individual pending a court hearing to determine if the person poses a significant danger of "imminently causing death or serious physical injury" to themselves or others. If the respondent refuses a hearing, they must be taken to their local CSB for an evaluation, to be completed within 72 hours of "admission." This would require additional resources for CSBs in the form of emergency services screeners to evaluate anyone initially rejecting a hearing for an emergency severe threat order of protection. There may be an additional fiscal impact to CSBs to provide training to pre-screeners on severe threat assessments or to hire staff with a higher degree of training or licensure to conduct and accept liability for these assessments. Because it is unknown how many individuals will be put under such an order or what will be required of clinicians, the cost is indeterminate at this time. For reference, previous fiscal impact statements for legislation related to pre-screening had estimated costs of \$225 per evaluation (3 hours x \$75 per hour).

The legislation references "admission" to a Community Services Board, however it is unclear where the individual will be held prior to the evaluation as CSBs do not typically provide secure confinement or inpatient services on site. If the legislation is interpreted to mean that an individual could be physically held at a CSB for up to 72 hours, additional resources would be necessary to accommodate this requirement. It is also unclear if a respondent

evaluated by the CSB under these provisions is considered to be under an ECO/TDO or if that individual will be admitted to a mental health facility for up to 14 days (even without the presence of a psychiatric illness), pursuant to the emergency severe threat order of protection. If that is the case, this will pose an unknown fiscal impact to DBHDS. State psychiatric hospitals are facing both a staffing shortage and a bed census crisis, which will create a strain on resources if this legislation results in additional individuals being admitted to state hospitals.

9. Specific Agency or Political Subdivisions Affected: Department of Behavioral Health and Developmental Services, Department of State Police, Local Law enforcement agencies, Courts, Department of Corrections, Department of Juvenile Justice, local and regional jails.

10. Technical Amendment Necessary: No.

11. Other Comments: None.