

Department of Planning and Budget

2020 Fiscal Impact Statement

1. Bill Number: HB1004H1

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

2. Patron: Mullin

3. Committee: Committee on Public Safety

4. Title: Protective orders; possession of firearms; surrender or transfer of firearms; penalty.

5. Summary: This bill prohibits any person subject to a permanent protective order (i.e., a protective order with a maximum duration of two years) from knowingly possessing a firearm while the order is in effect, provided that for a period of 24 hours after being served with a protective order such person may continue to possess such a firearm for the purposes of selling or transferring it to any person who is not otherwise prohibited by law from possessing such a firearm. The bill also provides that a person who is subject to a permanent protective order, within 24 hours, (a) surrender any firearm possessed by such person to a designated local law-enforcement agency, (b) sell or transfer any firearm possessed by such person to a dealer, or (c) sell or transfer any firearm possessed by such person to any person who is not otherwise prohibited by law from possessing such firearm and (ii) within 48 hours after being served with a protective order certify in writing, on a form provided by the Office of the Executive Secretary of the Supreme Court, that such person does not possess any firearms or that all firearms possessed by such person have been surrendered, sold, or transferred and file such certification with the clerk of the court that entered the protective order. A violation of this provision is a Class 6 felony. The proposed legislation also provides the following.

- Any person who fails to certify in writing in accordance with this section that all firearms possessed by such person have been surrendered, sold, or transferred or that such person does not possess any firearms is guilty of a Class 1 misdemeanor.
- The person who is subject to a protective order must be provided with the address and hours of operation of a designated local law-enforcement agency and the certification forms when such person is served with a protective order.
- A law-enforcement agency that takes into custody a firearm surrendered to such agency must: 1) prepare a written receipt containing: the name of the person who surrendered the firearm and the manufacturer, model, and serial number of the firearm; and, 2) provide a copy to the person who surrendered the firearm.

- Any firearm surrendered to and held by a law-enforcement agency must be returned by such agency to the person who surrendered the firearm upon the expiration or dissolution of the protective order.
- Upon the expiration or dissolution of the protective order, such agency must return the firearm within five days of receiving a written request for the return of the firearm by the person who surrendered the firearm and a copy of the receipt provided to such person by the agency. Prior to returning the firearm to such person, the law-enforcement agency holding the firearm must confirm that such person is no longer subject to a protective order and is not otherwise prohibited by law from possessing a firearm.
- A firearm surrendered to a law-enforcement agency may be disposed of in accordance with the provisions of §15.2-1721 (disposal of unclaimed firearms or other weapons in possession of sheriff or police) if: (i) the person from whom the firearm was seized provides written authorization for such disposal to the agency; or (ii) the firearm remains in the possession of the agency more than 120 days after such person is no longer subject to a protective order and such person has not submitted a request in writing for the return of the firearm.
- Any law-enforcement agency or law-enforcement officer that takes into custody, stores, possesses, or transports a firearm pursuant to this section is immune from civil or criminal liability for any damage to or deterioration, loss, or theft of such firearm.
- The law-enforcement agencies of the counties, cities, and towns within each judicial circuit, in coordination with each other, must designate and provide to the chief judges of all circuit and district courts within the judicial circuit, one or more local law-enforcement agencies to receive and store firearms pursuant to this section.
- The law-enforcement agencies must provide the chief judges with a list that includes the addresses and hours of operation for any law-enforcement agencies so designated that such addresses and hours of operation may be provided to a person served with a protective order.
- The bill also makes it a Class 4 felony for any person to sell, barter, give, or furnish any firearm to any person he knows is prohibited from possessing or transporting a firearm who is the subject to a permanent protective order.

6. Budget Amendment Necessary: No.

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

8. Fiscal Implications: The legislation would require local law enforcement agencies to receive and store firearms surrendered from a person subject to a protective order. The Governor's proposed executive amendments to the introduced budget (HB30/SB30) provide a one-time \$500,000 appropriation in Item 406 for Department of Criminal Justice (DCJS) to award grants to localities for storage of surrendered firearms. The introduced budget also includes

\$50,000 in Item 402 for the estimated net increase in the operating cost of the state prison bed resulting from the enactment of the proposed legislation.

The proposed legislation amends current law related to the surrender or transfer of firearms by persons subject to protective orders. Under current law, 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.

Additionally, persons subject to a protective order, related to cases of family abuse, are prohibited from knowingly possessing a firearm, a violation of which is a Class 6 felony. This proposal expands the Class 6 felony to prohibit persons subject to a protective order related to the health and safety of a petitioner and their family or household members from knowingly possessing a firearm. The proposal also expands a Class 4 felony offenses for transferring or intending to transfer a firearm to prohibited persons, to include those under protective order related to the health and safety of a petitioner and their family or household members.

In addition, this proposal would require a court to order a person subject to a protective order in cases of family abuse or pursuant to § 19.2-152.10 (protective order) to surrender, within 24 hours after being served, any firearm in his possession to a designated local law-enforcement agency, sell or transfer any firearms in possession to a dealer, or sell or transfer any firearms in possession to any person who is not otherwise prohibited by law from possessing firearms. Alternatively, the person subject to such a protective order may certify in writing that he does not possess any firearm or rifle within 48 hours after being served with the order. The proposal specifies that within 48 hours after surrendering, selling, or transferring all firearms, such person must certify in writing that all firearms in possession either have been surrendered, sold, or transferred and must file such certification with the clerk of the court that entered the protective order. Any person who fails to certify such requirement would be guilty of a Class 1 misdemeanor.

The proposal also establishes procedures for designating a local law-enforcement agency to receive and store firearms as well as a process to return surrendered firearms. It also specifies that for the purpose of designating a local law-enforcement agency to receive and store firearms, the chief judge of the circuit court shall coordinate with the local law-enforcement agencies within the judicial circuit to determine which agencies have the capacity to receive and store firearms.

Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail. According to the Virginia Criminal Sentencing Commission, not enough information is available to reliably estimate the increase in jail population as a result of this element of the proposed legislation; however, any increase in jail population will increase costs to the state. The Commonwealth currently pays localities \$4.00 a day for each misdemeanant or otherwise local-responsible prisoner held in a jail. It also funds a large portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs varies from locality

to locality. According to the Compensation Board's most recent Jail Cost Report (November 2019), the estimated total state support for local jails averaged \$34.07 per inmate, per day in FY 2018.

By expanding existing Class 6 and Class 4 felonies, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. 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 impact of this portion of the proposal on prison bed space needs cannot be determined. In addition, offenders convicted of the proposed 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 misdemeanor 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, this portion of the proposal is not expected to have an impact on the prison bed space needs of the Commonwealth during the six-year window specified by § 30-19.1:4 for legislative impact statements.

There is not enough information available to reliably estimate the increase in jail population as a result of this proposal; however, any increase in jail population will increase costs to the state. The Commonwealth currently 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 prisoner. 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. According to the Compensation Board's most recent Jail Cost Report (November 2019), the estimated total state support for local jails averaged \$34.07 per inmate, per day in FY 2018.

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, 2019 Acts of Assembly, requires that a minimum impact of \$50,000 be assigned to the bill.

The proposed legislation also may have a fiscal impact on local law enforcement agencies responsible for storing surrendered firearms, however, this fiscal impact is indeterminate. As previously stated, the Governor's proposed executive amendments to the introduced budget (HB30/SB30) provide a one-time \$500,000 appropriation in Item 406 for Department of Criminal Justice (DCJS) to award grants to localities for storage of surrendered firearms. The introduced budget includes \$50,000 in Item 402 for legislation related to the prohibition of the possession of firearms for persons subject to final orders of protection.

9. Specific Agency or Political Subdivisions Affected: Department of Corrections; local jails; local law enforcement agencies.

10. Technical Amendment Necessary: No.

11. Other Comments: This bill is identical to SB479S1.