



## **Fiscal Impact Statement for Proposed Legislation**

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### ***Virginia Criminal Sentencing Commission***

#### **House Bill No. 1004**

#### **Amendment in the Nature of a Substitute**

***(Patrons Prior to Substitute – Mullin and Murphy)***

**LD#:** 20106626

**Date:** 1/27/2020

**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.

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#### **Summary of Proposed Legislation:**

The proposed legislation amends §§ 18.2-308.1:4 and 18.2-308.2:1 of the *Code of Virginia*, relating to the surrender or transfer 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 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 proposal would also expand the Class 4 felony under § 18.2-308.2:1 for transferring or intending to transfer a firearm to prohibited persons, to include protective order subjects under § 18.2-308.1:4 (B) as prohibited persons.

In addition, the proposal would require a court to order a person subject to a protective order issued under § 16.1-279.1 or § 19.2-152.10 to, within 24 hours, surrender 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. The person must then certify in writing that he does not possess any firearms or that all firearms that he possessed have been surrendered, sold, or transferred and file such certification with the clerk of court

within 48 hours after being served with a protective order. Any person who fails to certify such requirement would be guilty of a Class 1 misdemeanor.

The proposal would also establish 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.

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### Analysis:

According to the Office of the Executive Secretary (OES) of the Supreme Court of Virginia, in calendar year 2018, a total of 5,051 protective orders were entered pursuant to § 16.1-279.1, while a total of 3,358 protective orders were entered pursuant to § 19.2-152.10<sup>1</sup>.

Existing data sources do not contain sufficient detail to estimate how many felony convictions would result from the proposal. However, affected offenders may be sentenced similarly to those who are currently convicted of a felony under the existing provisions (see table below).

### Offenders Convicted of Select Felony Firearm Offenses, FY2018-FY2019

Primary Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
Possess firearm, family abuse protective order in effect (§ 18.2-308.1:4(B))	13	38.5%	46.2%	1.5 months	15.4%	1 year
Sell, give, etc., firearm to ineligible person (§ 18.2-308.2:1)	8	62.5%	37.5%	6 months	0%	N/A

Existing databases do not provide sufficient detail to identify the number of new misdemeanor convictions likely to result from enactment of the proposal. However, offenders convicted of the proposed Class 1 firearm misdemeanor who accumulate three or more firearm convictions could be found guilty of a Class 6 felony under § 18.2-311.2. A review of FY2014 through FY2019 Circuit Court Case Management System (CMS) data for all felony convictions under § 18.2-311.2 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.

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### Impact of Proposed Legislation:

**State adult correctional facilities.** By expanding existing Class 6 and Class 4 felonies, 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 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

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<sup>1</sup> Reported totals exclude 2,352 protective orders for which the statute of issuance was uncertain.

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.

**Local adult correctional facilities.** By expanding existing felonies and creating a new Class 1 misdemeanor, 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.** 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.** Convictions under § 18.2-308.1:4 (B) and § 18.2-311.2 are not covered by the sentencing guidelines as the primary offense. Convictions under these sections, 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 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.

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**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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