



## Impact Analysis on Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 488 Amendment in the Nature of a Substitute (Patron Prior to Substitute – Suit)

**Date Submitted:** 02/04/02

**LD #:** 02-4542946

**Topic:** Domestic violence

#### **Proposed Change:**

The proposed legislation would amend the definition of family abuse in §16.1-228 to include acts that place a person in reasonable apprehension of bodily harm, as well as other acts or threats not specifically delineated by the section. The proposal would establish a statewide facilitator for victims of domestic violence within the Office of the Attorney General (§2.2-223.1) and would require the Department of State Police to establish and maintain a Protective Order Registry as a central repository of information on outstanding, valid protective orders (§§19.2-387.1 and 52-45). The proposal specifies that court clerks must “immediately upon receipt” forward copies of protective orders and stalking protective orders to the local law enforcement office (§§16.1-279.1 and 19.2-152.10), and it directs law enforcement agencies “upon receipt” of a protective order (including preliminary and emergency protective orders and those issued in stalking cases) to enter the name and other required information for the person subject to the order into the Virginia Criminal Information Network maintained by the State Police (§§16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.8, 19.2-152.9, and 19.2-152.10).

Revisions to §19.2-11.2 would ensure the victim’s right to confidentiality without a specific request from the victim and expand these rights to include sexual and family abuse victims, while changes to §19.2-11.01 would require Commonwealth’s Attorneys, if practicable, to verify that a victim received the standardized form listing the rights afforded crime victims. This section would also require that a victim be advised that his or her contact information shall be kept confidential. Under the proposed language, a law-enforcement officer must provide the allegedly abused person information regarding the legal and community resources available whether or not such information is requested, and, when requested, the law-enforcement officer must arrange transportation of an abused person to a hospital, shelter or magistrate (§19.2-83.1). The proposal would also expand the state’s witness protection program to include cases involving certain felony domestic violence offenses and certain sex offenses (§52-35).

Revisions to §9.1-102 would direct the Department of Criminal Justice Services to establish training standards and publish a model policy for law-enforcement personnel for handling domestic violence cases. Changes to §19.2-305.1 would require the court to order that any restitution be paid to the court clerk, who shall distribute the funds to crime victims.

The proposed legislation contains enactment clauses that direct the Virginia Supreme Court to establish judicial training regarding domestic violence and the Commonwealth's Attorneys Services Council to provide training to Commonwealth's attorneys related to the prosecution of domestic violence cases.

Several crimes are also affected by the proposal. The following table summarizes the proposed changes to the criminal code.

Statute and description of crime	Description of proposed change(s)
§18.2-61 Rape	Removes the requirement that married persons must be living apart or that the defendant caused bodily injury by use of force for a spouse to be convicted of rape
§18.2-164 Unlawful use of, or injury to, telephone and telegraph lines, or copying or obstructing messages	Penalty increased from a Class 3 to a Class 1 misdemeanor
§18.2-460(A) Obstructing justice	Penalty for knowingly obstructing justice increased from a Class 2 to a Class 1 misdemeanor

### Current Practice:

There is currently an exception in §18.2-61 whereby a spouse cannot be found guilty of raping his or her marital partner unless the spouses were living separate and apart or the defendant caused bodily injury by the use of force. According to calendar year (CY) 1999 and 2000 Pre/Post-Sentence Investigation (PSI) database, there were 62 offenders convicted of rape where the victim was identified as being a family member (see *Background Sentencing Information* below). Of these, 84% were sentenced to a state-responsible (prison) term, with a median sentence of 20 years.

### Background Sentencing Information

Misdemeanor Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Local-Responsible Sentence
Obstruction of justice (§18.2-460A)	1454	7%	92%	1%	1 mo.

Note: Includes only convictions of those held in the local jail pretrial or sentenced to serve time post-trial.  
Data Source: FY2001 Local Inmate Data System (LIDS)

Felony Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median State-Responsible Sentence
Rape involving a family member (§18.2-61)	62	11%	5%	84%	20 yr.

Data Source: CY1999 and CY2000 Pre/Post-Sentence Investigation (PSI) database

Currently, §18.2-164 describes several crimes that involve malicious or willful acts or aiding acts of interference with telephone or telegraph communication. These crimes are punishable as Class 3 misdemeanors. As fine only misdemeanors, LIDS will only have information if the

offender was detained in jail for an accompanying jailable offense. No cases were found in the FY2001 LIDS database.

To knowingly obstruct justice or to refuse to cease such obstruction when requested, under §18.2-460, is punishable as a Class 2 misdemeanor. Under the same statute, to use threats or force to intimidate or impede the administration of justice is punishable as a Class 1 misdemeanor. According to FY2001 LIDS data, there were 1,454 offenders convicted of obstruction of justice and 635 were convicted of the more serious charge that were held pre- or post-trial in jail (see *Background Sentencing Information* above). More than nine in ten were sentenced to a jail term, with the median sentence length being one month for both offenses.

### **Impact of Proposed Legislation:**

The proposed legislation raises the penalty structure for two existing crimes, and expands the applicability of a third crime. However, not all of the crimes affected by this proposal could be assessed for a bed space impact, and thus a full impact cannot be determined. The crimes that could not be assessed were rape of a spouse living in the same residence with no physical injury of the victim, and unlawful use, or injury to, telephone and telegraph lines, or copying or obstructing messages. Nonetheless, based on the crimes that could be examined, applying the sentences for similar crimes and the appropriate mandatory minimum sentences, this proposal would increase the need for local-responsible (jail) bed space. In this scenario, over the next six years, a conservative estimate of the net high local-responsible impact of this proposal would be 57 beds distributed across the state.

No adjustment to the sentencing guidelines would be necessary under the proposal.

### **Estimated Six-Year Impact in Local-Responsible (Jail) Beds**

FY03	FY04	FY05	FY06	FY07	FY08
2	44	57	57	57	57

**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 and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

### **Assumptions underlying the analysis include:**

#### **General Assumptions**

1. State and local responsibility is based on §53.1-20 as analyzed for the Secretary's Committee on Inmate Forecasting in 2001.
2. New cases representing local-responsible and no incarceration sentences were based on forecasts developed by the Virginia Criminal Sentencing Commission using the PSI database.

#### **Assumptions relating to sentence lengths**

1. The impact of the proposed legislation, which would be effective on July 1, 2002, is phased in to account for case processing time.
2. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2000. For violent offenses, this rate was 8.8%.
3. Sentences for obstruction of justice (§18.2-460(A)) were randomly assigned from use of a threat or force to intimidate or impede the administration of justice (§18.2-460(B)).

domvio06\_4542