



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 485

(Patron – Howell)

Date Submitted: 01/08/02

LD #: 02-4857228

Topic: Violation of stalking protective orders

Proposed Change:

Amends §§18.2-60.4, 19.2-152.8, 19.2-152.9 and 19.2-152.10 regarding stalking protective orders. The proposed §18.2-60.4 would require a term of confinement of at least one day for a first conviction for violating a stalking protective order and a mandatory minimum term of five days upon a second conviction. The proposal would increase the penalty for a third or subsequent conviction for violating a stalking protective order to a Class 6 felony and would establish a 10-day mandatory minimum term for such a conviction. The amended §19.2-152.8, 19.2-152.9 and 19.2-152.10 would ensure the confidentiality of the person protected by a stalking protective order, including an emergency or preliminary order.

Current Practice:

Currently, under §18.2-60.4, violation of a stalking protective order is punishable as a Class 1 misdemeanor. No mandatory term of confinement is required and there is no enhanced penalty for subsequent conviction under this statute.

Background Sentencing Information

Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Local-Responsible Sentence
1 st violation of a stalking protective order (§18.2-60.4)	8	12%	88%	0%	2 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)

There were eight convictions among offenders held pre- or post-trial in jail found in fiscal year (FY) 2001 Local Inmate Data System (LIDS) data involving the violation of a stalking protective order; for these offenders, no prior violations of a stalking protective order could be identified. Of the eight cases, 88% were sentenced to a local-responsible (jail) sentence with a median term of confinement of two months (see *Background Sentencing Information* above). In the preceding fiscal year (for which there is only data since 1/1/2000), there was one offender who would have been eligible for the proposed penalty for a third or subsequent offense; that person was convicted of 15 violations within a six-month period of time.

Misdemeanor convictions are not covered by the sentencing guidelines as the primary (or most serious) offense but may augment the sentence recommendation as additional offenses.

Impact of Proposed Legislation:

The proposed legislation establishes mandatory terms of confinement for violations of stalking protective orders and raises the penalty structure for a third or subsequent violation to a Class 6 felony. Historically, not all offenders eligible for conviction under mandatory minimum penalty statutes have been convicted under those statutes, often as the result of plea negotiations with the Commonwealth. The effect of the proposed mandatory minimum penalty on plea negotiations and the rate of conviction under these statutes cannot be determined. The proposal may have an impact on the need for state-responsible (prison) bed space. Due to the absence of misdemeanor conviction data prior to January 1, 2000, and the abnormal distribution of cases affected by the proposal (in FY2000, there was one offender with 15 total violations of a stalking protective order; in FY01, there were no offenders with a known subsequent violation), the impact on state-responsible (prison) bed space cannot be determined at this time.

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

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.