



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 408

(Patron – Weatherholtz)

Date Submitted: 12/04/01

LD #: 02-5907984

Topic: Relating to violation of protective orders.

Proposed Change:

Amends §16.1-253.2 such that a third or subsequent violation of any provision of a protective order shall be punishable as a Class 6 felony and require a one-year mandatory minimum term of incarceration. The proposal also requires two or more prior convictions be alleged in the warrant, information or indictment for the felony penalty to apply.

Current Practice:

Currently, under §16.1-253.2, violation of a protective order is punishable as a Class 1 misdemeanor. Upon conviction, a term of confinement must be imposed and in no case is the entire term to be suspended.

According to the Local Inmate Data System (LIDS) data, during fiscal (FY) 2001, 45 offenders were convicted for violation of §16.1-253.2 who were known to have been convicted for two prior violations. Information on this crime is limited because the LIDS database started to capture *Code of Virginia* specific information beginning January 1, 2000, and the Pre/Post-Sentence Investigation (PSI) database does not have information on misdemeanors that are not accompanied by a felony conviction. Nearly all (96%) of the offenders convicted under this statute received a local-responsible (jail) term, with a median sentence of six months (see *Background Sentencing Information* below). 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.

Background Sentencing Information

Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Local-Responsible Sentence
Third or subsequent violation of the provisions of a protective order (§16.1-253.2)	45	4%	96%	0%	6 mo.

Data Source: FY2001 Local Inmate Data System (LIDS).

Impact of Proposed Legislation:

The proposed legislation raises the penalty structure and adds a mandatory minimum for an existing crime, when two or more prior violations are alleged in the warrant, information or indictment. 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. For this analysis, it was assumed that 100% of the offenders meeting the proposed eligibility criteria would be sentenced to the mandatory minimum term. Application of the mandatory minimum sentences would increase the need for state-responsible (prison) bed space. In this scenario, over the next six years, the net high state-responsible impact would be 50 beds. As virtually all of these offenders have historically been sentenced to local-responsible (jail) beds, there will be a need for 23 fewer jail beds distributed across the state.

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

Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY03	FY04	FY05	FY06	FY07	FY08
19	47	50	50	50	50

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

FY03	FY04	FY05	FY06	FY07	FY08
-10	-22	-23	-23	-23	-23

Pursuant to §30-19.1:4, the estimated amount of the necessary appropriation is \$1,173,300 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 all persons affected under the proposed legislation were adjusted to be equal to the mandatory minimum as specified under §16.1-253.2, unless the effective sentence (imposed minus suspended time) already exceeded the mandatory minimum.

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