



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 236

Amendment in the Nature of a Substitute (Patron Prior to Substitute – Norment)

Date Submitted: 2/24/04

LD #: 04-0220780

Topic: Response to domestic violence

Proposed Change:

This proposal amends §§ 9.1-102, 16.1-253.2, 16.1-279.1, 19.2-81.4 and 63.2-1502 to improve the criminal justice system's response to domestic violence. The major elements of the proposal are:

- Creation of two new Class 6 felony crimes relating to violation of protective orders under § 16.1-253.2 (there is currently no felony violation of a protective order defined in the *Code of Virginia*);
 - The proposal makes it a Class 6 felony for an offender to violate a protective order by furtively entering the home of the protected party while the protected party is present or by entering and remaining in the home until the protected party arrives.
 - The proposal makes it a Class 6 felony for a person to violate a protective order and commit an assault and battery resulting in serious bodily injury upon any party protected by the order.
- Under § 9.1-102, training standards and a model policy (including protocols) need to be established for local and regional sexual assault response teams. Several of the enactment clauses direct the Department of Criminal Justice Services (DCJS) to ensure that specific information is included in the developed materials.
- Development by law-enforcement agencies of a specific arrest policy for domestic violence incidents involving law-enforcement officers and cases involving repeat offenders of family abuse or domestic violence; and
- Expansion of law-enforcement standards for determining which party is the primary physical aggressor to include (a) witness statements, and (b) other observations.

The remainder of this statement will address only those elements affecting § 16.1-253.2, which raise current misdemeanors to felonies under specified conditions.

Data Analysis:

Based on fiscal year (FY) 2001 and FY2002 Local Inmate Data System (LIDS) data, which contains information on offenders held pre- or post-trial in local jails, 19 offenders were convicted of violating a protective order under § 16.1-253.2 while also charged with burglary of a dwelling on the same date.

The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.

Of these, 21% received a local-responsible (jail) sentence (with a median sentence of 8.5 months), and 79% received a state-responsible (prison) sentence for one or more accompanying felony offenses.

According to FY2001 and FY2002 LIDS data, 247 offenders held pre- or post-trial in jail were convicted for violating a protective order under § 16.1-253.2 with an accompanying assault charge for the same date. Of these, 5% were sentenced to no active term of incarceration, 81% received a local-responsible (jail) sentence (with a median sentence of 3 months), and 14% received a state-responsible sentence based on an accompanying felony conviction. The LIDS database contains no information on the extent of a victim's injury.

Impact of Proposed Legislation:

The proposed legislation raises the penalty structure for an existing crime under two specified conditions. Under each condition, the data has limitations that may underestimate the actual impact. Given this scenario, over the next six years, the net high state-responsible impact would be at least one bed.

In addition, there will be a reduced need for local-responsible bed space; based on the methodology, there will be a reduced need for a partial bed statewide, for a savings to the state of \$4,692 (using FY2002 jail inmate costs) for reimbursement to localities. There would be an additional savings for the localities of \$3,193 for the same partial bed.

The anticipated impact on community corrections is expected to be twofold. First, there may be shift from local to state-funded programs. And second, on average, the need for a program placement will be delayed by about seven months (the difference in time actually served for the current misdemeanor versus the time estimated to be served under the proposed felony). A third factor may impact community corrections programs; that is, the supervision for a felony crime may be longer than for the comparable crime when defined as a misdemeanor. For convictions for a Class 6 felony similar to the proposed provision, most (78%) had sentences that included supervised probation; of those, the supervision periods ranged from about six months to an indefinite term of supervision, with a median of two years supervision.

Additionally, there may be an increased need for prison or jail bed space based on probation or post-release supervision revocations. A judge can impose and suspend more time for a felony than a misdemeanor and, consequently, if an offender violates release conditions, the potential amount of time that a judge may re-impose for a revocation is longer as well. For convictions of the previously described Class 6 felony, all or part of the sentence was suspended for 83%; of those, the suspended time ranged from about 13 months to 20 years (about 17% had suspended time that exceeded the statutory maximum of the most serious offense due to additional offenses), with a median of about three years suspended from the offender's sentence.

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

The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.

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

FY05	FY06	FY07	FY08	FY09	FY10
1	1	1	1	1	1

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$32,589 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 2003.
2. New cases representing misdemeanor sentences were based on forecasts developed by the Commission using Local Inmate Data System (LIDS) data.
3. Cost per prison bed was assumed to be \$22,606 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.***
4. Cost per jail bed was based on The Compensation Board's FY2002 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$29.81 per day or \$10,889 per year. The local cost was calculated by using the daily expenditure cost of \$54.12 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$20.29 per day or \$7,410 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.***

Assumptions relating to sentence lengths

1. The impact of the proposed legislation on criminal provisions, which would be effective on July 1, 2004, is phased in to account for case processing time.
2. The 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, 2002; for nonviolent offenses the rate was 9.54%. Release dates for local-responsible felony convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by felons sentenced in FY2003 to local jails; this rate was 89.7%. Release dates for misdemeanor convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by felons sentenced in FY2003 to local jails; this rate was 39.66%.
3. Sentences for persons convicted of § 16.1-253.2 by entering the home of the protected party were randomly assigned from sentences for all Class 6 felony stalking offenses and crimes involving threats. The felony sentence was applied to those cases where a charge of burglary of a dwelling occurred on the same date.
4. No impact was assumed for violation of a protective order accompanied by an assault and battery that resulted in serious bodily injury. This assumption was based on a presumption that an assault with serious bodily injury is at least a Class 6 felony in its own right, and that the offender would be sentenced for the totality of the offense behavior whether under current law or the proposal.

protord20_0220

The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.