



## Impact Analysis on Proposed Legislation

### *Virginia Criminal Sentencing Commission*

#### **Senate Bill No. 236**

#### *Amendment in the Nature of a Substitute (Patron – Norment)*

**Date Submitted:** 1/29/04

**LD #:** 04-1165780

**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 the third or subsequent conviction for violating a protective order a Class 6 felony. In order for an offender to be convicted of the proposed felony, the three crimes could arise out of three separate incidents or all in the same incident (three persons, each with a protective order naming the offender).<sup>1</sup>
  - The proposal makes it a Class 6 felony for a person to violate a protective order and commit an assault and battery resulting in 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.

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<sup>1</sup> This interpretation is based on case law (e.g., *Peterson v. Commonwealth*), where two counts of a crime led to both a first and subsequent conviction of the crime where the penalty was more severe for the second conviction.

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.

**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, 132 offenders were convicted of three or more violations of protective orders since LIDS began collecting Virginia-specific offense data in January 2000. All of the 132 offenders were sentenced to some active term of incarceration; 85% were given a local-responsible (jail) term, with a median sentence of seven months. The remaining 15% were sentenced to a state-responsible (prison) term due to one or more accompanying felony charges.

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.

**Impact of Proposed Legislation:**

The proposed legislation raises the penalty structure for an existing crime under three 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 103 beds.

In addition, there will be a reduced need for local-responsible bed space; based on the methodology, there will be a need for at least 37 fewer beds statewide, for a savings to the state of at least \$403,142 (using FY2002 jail inmate costs) for reimbursement to localities. There would be an additional savings for the localities of at least \$274,340 for the same beds.

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.

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

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

FY05	FY06	FY07	FY08	FY09	FY10
34	70	83	91	97	103

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

FY05	FY06	FY07	FY08	FY09	FY10
-14	-28	-34	-36	-37	-37

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$2,328,933 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 with two prior convictions were randomly assigned from sentences for all Class 6 felony stalking offenses and crimes involving threats.
4. Sentences for persons convicted of § 16.1-253.2 with an accompanying misdemeanor assault on the same date were randomly assigned from sentences for all Class 6 felony stalking offenses and crimes involving threats. The felony sentence was applied to 48.1% of the cases; the same rate that was observed in the calendar year (CY) 2000 Incident Based Reporting (IBR) data for "apparent minor injury" when the offense was reported as a simple assault.

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