



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1328

Amendment in the Nature of a Substitute

(Patrons Prior to Substitute –Peace and McClellan)

LD#: 08-0835676

Date: 2/4/2008

Topic: Stalking, subsequent conviction within five years

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$501,793 (18 beds)
- **Local Adult Correctional Facilities:**
-\$16,851 (-2 beds)
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
Cannot be determined, likely to be negligible
- **Juvenile Detention Facilities:**
Cannot be determined, likely to be negligible

Summary of Proposed Legislation:

The proposal amends § 18.2-60.3 by increasing the penalty for certain stalking offenses. Under the proposal, a second or subsequent conviction for stalking within five years is increased from a Class 1 misdemeanor to a Class 6 felony. In addition, the penalty for stalking when there is a court order that prohibits contact between the offender and the victim (or any member of the victim's family/ household) is increased under the proposal from a Class 1 misdemeanor to a Class 6 felony.

Currently, the penalty for a third conviction for stalking within five years is a Class 6 felony; all other stalking crimes under § 18.2-60.3 are Class 1 misdemeanors. In addition, § 18.2-60.3 defines a Class 1 misdemeanor when a stalking protective order (issued under §§ 19.2-152.8, 19.2-152.9 or 19.2-152.10, et al.) has been violated. (The proposal would apply to any court order that prohibits contact between the offender and the victim, etc., and is, therefore, not limited to cases involving protective orders).

Analysis:

According to calendar year (CY) 2005 and CY2006 Local Inmate Data System (LIDS) data, 11 offenders held pre- or post-trial in jail were convicted of Class 1 misdemeanor stalking offenses and had a known prior misdemeanor stalking conviction. For 10 of the 11 offenders, stalking was the most serious charge at conviction. Most of these offenders received a local-responsible (jail) term, for which the median sentence was two months. One offender was sentenced to the maximum term allowed by law (12 months).

Although the amendment applies to offenders violating no contact provisions set forth in any court order, data available to the Commonwealth only provide information on offenders who violate protective orders. Based on the CY2005 and CY2006 LIDS data, there were 12 offenders held pre- or post-trial in jail convicted for a stalking offense and violation of a protective order (other than a stalking protective order). For 11 of the 12 offenders, these were the most serious charges at conviction. All of

these offenders received jail terms, with a median sentence of seven months. None were sentenced to the maximum term available under current law.

LIDS data also indicate that 42 offenders held pre- or post-trial in jail were convicted of violating a stalking protective order. The majority (81%) received a jail term to serve (median sentence of 2.5 months).

Impact of Proposed Legislation:

State adult correctional facilities. By raising the penalty structure for a second stalking conviction within five years and creating a new felony for stalking in violation of a no-contact order, the proposal will increase the need for state-responsible (prison) beds. The impact is estimated to be at least 18 beds by 2013. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$501,793.

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

FY08	FY09	FY10	FY11	FY12	FY13
6	11	14	16	18	18

Local adult correctional facilities. Based on the same methodology, the proposal is expected to decrease local-responsible (jail) bed space needs by two beds statewide, for a savings to the state of \$16,851 and \$16,903 to the localities.

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

FY08	FY09	FY10	FY11	FY12	FY13
-1	-2	-2	-2	-2	-2

Adult community corrections resources. Because the proposal will likely result in additional felony offenders on community supervision, an impact on state community corrections resources is expected. However, full cost of the impact on community corrections cannot be determined.

Virginia's sentencing guidelines. Convictions under § 18.2-60.3 are not covered by the sentencing guidelines as the primary (most serious) offense in a sentencing event. However, convictions under this statute may augment the guidelines recommendation if a covered offense is the most serious at conviction. No adjustment to the guidelines would be necessary as a result of the proposal.

Juvenile correctional centers. Because the proposal increases the penalty for certain acts from a misdemeanor to a felony, the proposal could result in additional commitments to the Department of Juvenile Justice (DJJ). Existing *Code* specifies that a juvenile is eligible for commitment if he is adjudicated for a felony, has a prior felony adjudication or has accumulated a total of four Class 1 misdemeanor adjudications. If a juvenile were committed to DJJ for the proposed felony offense, the minimum confinement assigned under the Department's Length of Stay (LOS) guidelines would be 6 to 12 months. The number of additional juveniles who may be committed cannot be determined. Therefore, DJJ is not able to assess the impact of the proposal on Juvenile Correctional Center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal may have an impact on the bed space needs of juvenile detention facilities, but the impact cannot be determined.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$501,793 for periods of imprisonment in state adult correctional facilities and cannot be determined 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 of Public Safety's Committee on Inmate Forecasting in 2007.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety's Committee on Inmate Forecasting and approved in July 2007.
3. Cost per prison bed was assumed to be \$27,452 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 FY2006 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.42 per day or \$10,381 per year. The local cost was calculated by using the daily expenditure cost of \$61.48 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 \$28.51 per day or \$10,413 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*** Note: The Compensation Board does not include data from jails that were not in operation for the entire fiscal year. Middle River Regional Jail was excluded because it opened during FY2006, while Augusta and Tazewell Counties were excluded because their jails were closed during the same time period; Augusta County now participates in the new Middle River Regional Jail and Tazewell County now participates in the Southwest Virginia Regional Jail.

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2007, 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, 2006. For person crimes, this rate was 10.63%.
3. It was assumed that prosecutors would charge all eligible offenders with the proposed felony.
4. Offenders affected by the proposal were assumed to receive sentences similar to offenders currently convicted for Class 6 felony stalking offenses.

stalk03_0835