Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2381

Amendment in the Nature of a Substitute
(Patron Prior to Substitute – Scott, J.M.)

LD#: 09-0425720 **Date:** 2/3/2009

Topic: Protective orders

Fiscal Impact Summary:

- **State Adult Correctional Facilities:** Cannot be determined, likely to be small
- **Local Adult Correctional Facilities:** Cannot be determined
- **Adult Community Corrections Programs:** Cannot be determined
- **Juvenile Correctional Centers:** None ($0)
- **Juvenile Detention Facilities:** None ($0)

Summary of Proposed Legislation:

The proposal amends §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.8, 19.2-152.9, and 19.2-152.10 to add a condition to the list of prohibited acts contained in protective orders. Specifically, the proposal requires that protective orders issued pursuant to these statutes contain a provision that prohibits harming a companion animal that is owned, possessed, etc., by the petitioner or a family or household member of the petitioner when such harm is with the intent to threaten, coerce, intimidate or harm the petitioner or a family or household member of the petitioner.

Section 16.1-253.2 specifies the penalties for violations of protective orders. Violating a protective order three or more times in 20 years, assaulting a protected person causing serious physical injury, and entering the home of a protected person are Class 6 felonies. Other violations of a protective order are Class 1 misdemeanors, with the second violation carrying a mandatory minimum penalty of 60 days. By increasing the number of conditions with which an individual must comply, the proposal may increase the number of individuals who violate protective orders. In addition, §§ 18.2-308.1:4 and 18.2-119 prohibit the purchase or transport of a firearm by individuals subject to protective orders as well as trespassing in violation of a protective order, respectively.

Analysis:

According to the fiscal year (FY) 2006 and FY2007 Pre/Post-Sentence Investigation (PSI) database, 19 offenders were convicted under the felony provisions of § 16.1-253.2 for violating a protective order. The violation was the primary, or most serious, offense in six of these cases. Three of the six offenders received a state-responsible (prison) term, with a median sentence of two years; the remaining three were not given an active term of incarceration to serve.

According to the calendar year (CY) 2005 and CY2006 Local Inmate Data System (LIDS), there were 1,504 persons held pre- or post-trial in jail who were convicted under the misdemeanor provisions of § 16.1-253.2 for a violating a protective order. The majority (86%) received a jail term, with a median sentence length of slightly less than one month.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the list of prohibited behavior contained in protective orders, the proposal may increase the number of individuals who violate protective orders. Criminal justice databases are insufficient to determine the additional number of offenders who would be prosecuted, convicted, and sentenced as a result of the proposal. However, there were relatively few felony convictions under existing provisions recorded during a recent two-year period (see *Analysis* section above) and the condition added by the proposal is limited in scope. Although the magnitude of the impact cannot be determined, it is likely to be small.

Local adult correctional facilities. By increasing the number of misdemeanor convictions for protective order violations, the proposal could increase local-responsible (jail) bed space needs. The magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in felony and misdemeanor convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections services. The potential impact on state and local community corrections resources cannot be quantified.

Virginia's sentencing guidelines. Currently, offenses under § 16.1-253.2 are not covered by the sentencing guidelines as the primary (or most serious) offense in a sentencing event. However, convictions under this statute may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

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.

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