



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1364

(Patron – Lucas)

LD#: 11103961

Date: 1/17/2011

Topic: Protective orders related to family abuse and dating violence

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$93,767 (3 beds)
- **Local Adult Correctional Facilities:**
Negligible
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

Summary of Proposed Legislation:

The proposal amends §§ 16.1-228, 16.1-253.1, 16.1-253.2, 16.1-253.4, 16.1-279.1, 18.2-57, 18.2-60.3, 18.2-60.4, 19.2-11.2, 19.2-81.3, 19.2-152.8, 19.2-152.9, 19.2-152.10, 19.2-387.1, and 52.45 relating to family abuse and stalking protective orders.

The proposal increases the penalties for violating a stalking protective order under certain circumstances to make them consistent with the penalties for violating a family abuse protective order. Currently, violation of a stalking protective order is a Class 1 misdemeanor. Under the proposal:

- Conviction for a second violation of a stalking protective order, when the offense is committed within five years of a conviction for a prior offense and when either the instant or prior offense was based on an act or threat of violence, would have a mandatory minimum of 60 days;
- Conviction for a third or subsequent violation, when such offense is committed within 20 years of the first conviction and when either the instant or any of the prior offenses was based on an act or threat of violence, would be a Class 6 felony with a mandatory minimum sentence of six months;
- Commission of an assault and battery resulting in serious bodily injury upon a protected party would be a Class 6 felony; and
- Violation of a stalking protective order by furtively entering the home of the protected party while such party is present or remaining in the home until the protected party arrives would be a Class 6 felony.

The proposal also provides that any person convicted for violating a stalking protective order for which no mandatory minimum sentence is specified shall be sentenced to a term of confinement and shall not have his entire sentence suspended.

Finally, the proposal expands the persons and circumstances for which a protective can be issued by: (1) amending the definition of "family abuse" to specifically include assault, stalking, sexual assault, forceful detention, and intentional damage to real or personal property with the intent to intimidate or control; (2) expanding the availability of stalking protective orders to any person who has been a

victim of "dating violence" or an "act of violence"; and (3) providing a means for the court to issue mutual protective orders when there is conduct between two parties that would justify the issuance of such an order.

Analysis:

The Local Inmate Data System (LIDS) captures information on persons held in Virginia's local and regional jails. The information presented below is based on fiscal year (FY) 2009 and FY2010 LIDS data.

§ 18.2-60.4:

- 63 offenders were convicted of a Class 1 misdemeanor for a first violation of a stalking protective order (these offenders had not been convicted of violating a stalking protective order within the previous five years). For these offenders, violation of the stalking protective order was the primary (or most serious) offense. All of these offenders received a local-responsible (jail) term, for which the median sentence was 5.9 months. The proposal would require all offenders convicted of violating a stalking protective order to serve at least one day in jail.
- 23 offenders were convicted of a Class 1 misdemeanor for a second violation of a stalking protective order within five years (as the primary offense). The median jail sentence for these offenders was 6.0 months. It is not known how many of these cases involved an act or threat of violence (associated with the current or prior offense), which would make the offender subject to the proposed 60-day mandatory minimum sentence.
- Nine offenders were convicted of a third or subsequent violation of a stalking protective order (as the primary offense). For these offenders, the median jail sentence was 6.5 months. The number of these cases involving an act or threat of violence (associated with the current or one of the prior offenses) is not known; under the proposal, a third or subsequent violation with a current or prior act or threat of violence would be elevated to a Class 6 felony and subject to a six-month mandatory minimum sentence.
- The proposal would also increase the penalties for violations of stalking protective orders resulting in bodily injury and violations in which the offender enters the home of the protected party. According to FY2009 and FY2010 Sentencing Guidelines and LIDS data, no offenders were convicted for violating a stalking protective order in combination with either an assault-and battery or a burglary/trespassing offense committed on the same date.

§ 16.1-253.2:

- 1,507 offenders were convicted of a Class 1 misdemeanor for violation of a protective order under § 16.1-253.2. For these offenders, violation of the protective order was the primary (or most serious) offense.
- 54 offenders were convicted of a Class 1 misdemeanor under § 16.1-253.2 for a second violation of a protective order involving an act or threat of violence (associated with the current or prior offense) within five years (as the primary offense). The majority of these offenders (94%) received a local-responsible (jail) term with a median sentence of 2.0 months.
- 23 offenders were convicted of a felony under § 16.1-253.2 for a third or subsequent violation of a protective order with a current or prior act or threat of violence (as the primary offense). The majority of these offenders (87%) received a local-responsible (jail) term with a median sentence of 9.5 months.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal is expected to increase the need for state-responsible (prison) bed space in two ways. First, expanding the persons and circumstances for which a protective order can be issued may result in additional felony convictions for violations of protective orders. The number of additional felony convictions likely to result from these changes is unknown; therefore, the impact of this aspect of the proposal on prison beds cannot be determined. Second, increasing the penalty for violating a stalking protective order from a Class 1 misdemeanor to a Class 6 felony in certain circumstances will increase the need for prison beds, and the impact of this aspect of the proposal can be estimated. The impact is estimated to be three beds by FY2017.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$93,767.

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

FY12	FY13	FY14	FY15	FY16	FY17
0	2	3	3	3	3

Local adult correctional facilities. The proposal is expected to impact the local-responsible (jail) population in three ways. First, the proposed mandatory minimum jail sentences would likely increase the need for jail beds. Second, increasing the penalty for certain violations of a stalking protective order from a misdemeanor to a felony could reduce the need for jail beds, as some offenders who have received a jail sentence in the past will receive a prison term under the proposal. Third, expanding the persons and circumstances for which a protective order can be issued is expected to increase the need for jail beds. The net effect of these impacts is expected to result in an increase in future jail bed space needs.

Adult community corrections resources. 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 state and local adult community corrections services. The impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. Currently, offenses under §§ 16.1-253.2 and 18.2-60.4 are not covered by the guidelines when one of these crimes is the primary (most serious) offense. However, convictions under these statutes may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

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

Juvenile detention facilities. According to the Department of Juvenile Justice (DJJ), the proposal will not increase bed space needs in juvenile detention facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$93,767 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 of Public Safety's Committee on Inmate Forecasting in 2010.
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 2010.
3. Cost per prison bed was assumed to be \$27,065 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 FY2009 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.86 per day or \$10,541 per year. The local cost was calculated by using the daily expenditure cost of \$87.30 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 \$45.75 per day or \$16,712 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 offenders

1. It was assumed that all offenders convicted of a third or subsequent violation of a stalking protective order had committed an act, or made a threat, of violence as part of the current offense or in connection with one of the prior offenses. This would make them eligible for prosecution under the proposed Class 6 felony. Further, it was assumed that all eligible offenders would be prosecuted for, and convicted of, the proposed Class 6 felony.

Assumptions relating to sentencing

1. The impact of the proposed legislation, which would be effective on July 1, 2011, is phased in to account for case processing time.
2. To gauge the impact of the proposal on the misdemeanor convictions, it was assumed that all offenders convicted of a first violation of a stalking protective order who did not receive an active term of incarceration to serve in the past will serve an effective sentence of exactly one day in jail should the proposal be enacted (the proposal specifies that the court cannot suspend the entire sentence). It was assumed that all offenders convicted of a second violation of a stalking protective order who received a sentence less than the proposed 60-day mandatory minimum term in the past will receive an effective sentence of exactly 60 days under the proposal.
3. To gauge the impact of sentencing on the cases that would be elevated to a felony, it was assumed that the distribution of sentences for the affected cases would be similar to the distribution of sentences under the existing felony and misdemeanor penalties defined in § 16.1-253.2 for violating protective orders. Offenders affected by the proposed mandatory minimum sentence were assumed to serve a sentence equal to at least the mandatory minimum term specified in the proposal.
4. 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, 2009. For person crimes, this rate was 10.6%.

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