



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 361

(Patron – McClellan)

LD#: 12100443

Date: 12/7/2011

Topic: Stalking, subsequent conviction within five years

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$642,843 (23 beds)
- **Local Adult Correctional Facilities:**
-\$25,060 (-2 beds)
- **Adult Community Corrections Programs:**
Cannot be determined

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

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 is increased from a Class 1 misdemeanor to a Class 6 felony in cases in which there is a protective order in effect and the victim is the protected person or any of the person's family or household members.

Currently, the third or subsequent conviction for stalking is a Class 6 felony; all other stalking crimes under § 18.2-60.3 are Class 1 misdemeanors. In addition, under § 18.2-60.4, it is a Class 1 misdemeanor to violate a protective order issued under §§ 19.2-152.8, 19.2-152.9 or 19.2-152.10.

Analysis:

According to the most recent available data, namely fiscal year (FY) 2010 and FY2011 data from the Circuit Court Automated Data System, the General District Court Automated Data System, the Juvenile and Domestic Relations Court Automated Data System, and the Local Inmate Data System, 11 adults were sentenced for a Class 1 misdemeanor under § 18.2-60.3 for a second act of stalking within five years. In these cases, the offender was convicted of misdemeanor offenses only (no felonies). The median local-responsible (jail) sentence for these offenders was two months. Under the proposal, these offenders could be prosecuted for a Class 6 felony.

According to the FY2010 and FY2011 Local Inmate Data System (LIDS), 18 additional offenders were (1) charged with both stalking and a violation of a protective order committed on the same date and (2) were ultimately convicted of one, or both, misdemeanor crimes. While two of these offenders did not receive an active term of incarceration to serve after sentencing, the remaining 89% received a local-responsible (jail) term, for which the median sentence was nine months. Four of these offenders were given the maximum allowable jail term of 12 months for the single offense and four additional

offenders were sentenced to terms of more than 12 months as a result of multiple misdemeanor convictions. Under the proposal, these offenders could be prosecuted for a Class 6 felony.

According to FY2005 through FY2011 data from the Circuit Court Automated Information System (CAIS), 50% of offenders convicted of a felony under § 18.2-60.3(B) for a third or subsequent act of stalking (as the primary, or most serious, offense) were given a state-responsible (prison) term. The median sentence in these cases was 2.5 years.

The Department of Juvenile Justice (DJJ) Court Service Units serve as the point of entry into the juvenile justice system. An “intake” occurs when a juvenile is brought before a court service unit officer for one or more alleged law violations. The Department of Juvenile Justice reports averaging about 33 intake petitions for the three most recent fiscal years (FY2009 to FY2011) for a violation of § 18.2-60.3 by a person under the age of 18. The number of instances of stalking that also involved a violation of a protective order is not known.

Impact of Proposed Legislation:

State adult correctional facilities. By raising the penalty structure for a second stalking conviction and creating a new Class 6 felony for stalking in violation of a protective order, the proposal will increase the need for state-responsible (prison) beds. The impact is estimated to be 23 beds by FY2018. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$642,843.

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

FY13	FY14	FY15	FY16	FY17	FY18
7	15	19	21	23	23

Local adult correctional facilities. Because some offenders would receive a prison sentence instead of the jail sentence they have in the past, the proposal is expected to decrease local-responsible (jail) bed space needs. The impact is estimated to be a decrease of two beds statewide, for a savings to the state of \$25,060 and \$26,823 to the localities.

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

FY13	FY14	FY15	FY16	FY17	FY18
-2	-2	-2	-2	-2	-2

Adult community corrections resources. Raising a crime from a Class 1 misdemeanor to a Class 6 felony may decrease the demand for local community-based probation services and increase the need for state community corrections resources. The *Code of Virginia*, however, allows judges to utilize local community-based probation programs for Class 5 and Class 6 felons as well as misdemeanants. The net impact of the proposal on local versus state community corrections resources cannot be estimated.

Virginia’s sentencing guidelines. Felony convictions under § 18.2-60.3 are not covered by the sentencing guidelines as the primary (or most serious) offense. However, a conviction under this section could 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. It is possible that a person under the age of 18 could violate the stalking provisions as a second offense or while subject to a protective order. In such an event, an adjudication for a Class 6 felony in juvenile and domestic relations district court would make that person eligible for commitment to a juvenile correctional center pursuant to subsection (A)(14) of § 16.1-278.8 of the *Code of Virginia*. Therefore, the legislative proposal may have an impact on juvenile correctional center bed space needs. However, given the relatively low number of stalking intakes and the fact that the violation must occur as a second offense or when a protective order is in effect, the Department anticipates that the actual impact on juvenile correctional center bed space needs is likely to be small.

Juvenile detention facilities. It is possible that a person under the age of 18 could violate the stalking provisions as a second offense or while subject to a protective order. In such an event, the person could be subject to pre-trial detention in a juvenile detention facility pursuant to § 16.1-248.1 of the *Code of Virginia*. In addition, an adjudication for a Class 6 felony in juvenile and domestic relations district court would make that person eligible for post-dispositional detention under § 16.1-284.1 of the *Code of Virginia*. Therefore, the legislative proposal may have an impact on juvenile detention bed space needs. However, given the relatively low number of stalking intakes and the fact that the violation must occur as a second offense or when a protective order is in effect, the Department anticipates that the actual impact on juvenile detention bed space needs is likely to be small.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$642,843 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 2011.
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 2011.
3. Cost per prison bed was assumed to be \$27,688 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 FY2010 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.19 per day or \$10,296 per year. The local cost was calculated by using the daily expenditure cost of \$70.01 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 \$30.17 per day or \$11,020 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 prosecutors would charge all eligible offenders with the proposed Class 6 felony.

Assumptions relating to sentence lengths

2. The impact of the proposed legislation, which would be effective on July 1, 2012, is phased in to account for case processing time.
3. Offenders affected by the proposal were assumed to receive sentences similar to offenders currently convicted for Class 6 felony stalking offenses.
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, 2010. For person crimes, this rate was 10.5%.