



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 363

#### Amendment in the Nature of a Substitute

(Patron Prior to Substitute – McClellan)

LD#: 12104600

Date: 01/24/2012

Topic: Protective orders

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$50,000\*
- **Local Adult Correctional Facilities:**  
Cannot be determined
- **Adult Community Corrections Programs:**  
Cannot be determined

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

\* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 890 of the 2011 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

#### 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 of the *Code of Virginia*, relating to protective orders. The proposal expands the list of conditions to which a respondent may be subjected when a magistrate or judge issues a protective order, including preliminary and emergency protective orders, as listed in the above statutes. Under the proposal, the list includes the condition that the court grant the petitioner or the person on whose behalf the protective order is issued the possession of any animal owned, possessed, or kept by the petitioner, the respondent, or by a child residing in the household. Failure of the respondent to turn over the companion animal would be considered a violation of the protective order.

Section 16.1-253.2 specifies the penalties for violations of protective orders issued pursuant to §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.14, 16.1-279.1, and subsection B of § 20-103 that prohibit the respondent from going or remaining upon property, further acts of family abuse, or contact between the respondent and certain individuals. Under § 16.1-253.2, violating a protective order three or more times in 20 years (with at least one involving an act or threat of violence), 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. Sections 18.2-308.1:4 and 18.2-119 prohibit the purchase or transportation of a firearm by individuals subject to protective orders as well as trespassing in violation of a protective order, respectively.

The 2011 General Assembly modified several sections of the *Code* relating to protective orders. In addition to expanding the circumstances under which certain protective orders may be issued, the 2011 General Assembly modified § 18.2-60.4, relating to violations of protective orders issued pursuant to §§ 19.2-152.8, 19.2-152.9, and 19.2-152.10, to mirror the penalties prescribed in § 16.1-253.2.

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**Analysis:**

The Local Inmate Data System (LIDS) captures information on persons held in Virginia's local and regional jails. According to fiscal year (FY) 2010 and FY2011 LIDS data, there were 1,798 offenders held pre- or post-trial in jail who were convicted of a Class 1 misdemeanor under § 16.1-253.2 for a first violation of a protective order. For these offenders, the violation of the protective order was the primary (or most serious) offense. The majority of these offenders (97.3%) received a local-responsible (jail) term, for which the median sentence was approximately 1.0 month.

During the same time period, 73 offenders were held for a Class 1 misdemeanor conviction for a second violation of a protective order involving violence within five years (as the primary offense) under § 16.1-253.2. One of these offenders did not receive an active term of incarceration to serve after sentencing. The remaining 72 offenders received a local-responsible (jail) term, with a median sentence of 2.0 months.

Also from the same two years of data, there were 25 offenders convicted of a third or subsequent felony violation of a protective order within 20 years (as the primary offense) under § 16.1-253.2. The felony protective order violation was the primary offense in 20 of the cases. The majority of these offenders (65%) received a local-responsible (jail) term, with a median sentence of roughly 8.0 months. For the seven offenders who received a state-responsible (prison) term, the median sentence was 2.0 years.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By adding a condition to the list that a respondent must abide by when subject to a protective order, it is possible that state-responsible (prison) bed space needs will increase. Specifically, under the proposal, if the respondent does not abide by a protective order by refusing to give the animal to the petitioner, he or she may be found in violation of the protective order, which may increase the future prison bed space needs. However, existing databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal. The magnitude of the impact on prison beds cannot be quantified.

**Local adult correctional facilities.** The proposal may increase the local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

**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. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

**Virginia's sentencing guidelines.** Currently, felony violations of protective orders 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.

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**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; therefore, Chapter 890 of the 2011 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.**

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

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