



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 754

#### *Amendment in the Nature of a Substitute (Patron Prior to Substitute – Bell, Robert B.)*

**LD#:** 16105817

**Date:** 2/25/2016

**Topic:** Domestic violence-related misdemeanors; second offense

#### 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) \*\*

\*\* Provided by the Department of Juvenile Justice

\* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 665 of the 2015 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

#### Summary of Proposed Legislation:

The proposal adds § 18.2-60.6 to the *Code of Virginia* to increase the penalty for a second misdemeanor offense related to domestic violence or stalking. Under the proposal, the penalty for a misdemeanor conviction for violating a protective order (§§ 16.1-253.2 or 18.2-60.4), assault and battery of a family member (§ 18.2-57.2), or stalking (§ 18.2-60.3) would be increased to a Class 6 felony if the offender has previously been convicted of one of these offenses or of an offense under Article 4 of Chapter 4 of Title 18.2 (§§ 18.2-51 through 18.2-57.3), dealing with assaults, in the past 20 years against the same victim as the current offense.

Currently, assault and battery of a family or household member, stalking, and violating a protective order are punishable as Class 1 misdemeanors unless certain aggravating circumstances exist. For instance, under § 18.2-57.2, a third or subsequent conviction for assault and battery of a family or household member (occurring on different dates) within 20 years is punishable as a Class 6 felony. Pursuant to § 18.2-60.3, the penalty for stalking is increased to a Class 6 felony in cases in which the offender has previously been convicted of assaulting a family or household member (§ 18.2-57.2), violating a protective order, or assaulting the victim of the current stalking offense within the last five years. A third conviction under the stalking provision within five years is also a Class 6 felony.

Under §§ 16.1-253.2 and 18.2-60.4, the punishment for a second violation of a protective order within five years (with at least one involving an act or threat of violence) includes a mandatory minimum term of confinement of 60 days. In addition, any person who violates a protective order three or more times in 20 years (with at least one involving an act or threat of violence) is guilty of a Class 6 felony and subject to a

mandatory minimum term of confinement of six months. If an offender commits an assault and battery resulting in serious bodily injury to any person protected by the protective order, he or she is guilty of a Class 6 felony. It is also a Class 6 felony to violate a protective order by furtively entering the home of a protected person.

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**Analysis:**

During fiscal year (FY) 2014 and FY2015, a total of 15,289 offenders were convicted of a Class 1 misdemeanor under §§ 16.1-253.2, 18.2-57.2, 18.2-60.3, or 18.2-60.4 (as the primary, or most serious, offense) in General District Court, Juvenile and Domestic Relations Court, or Circuit Court. Examining court data for calendar year 2005 through FY2015 reveals that at least 2,850 offenders had at least one prior conviction for an offense listed in the proposal and therefore may be subject to the proposed felony enhancement. However, existing data sources do not provide sufficient detail to identify cases where the prior offense was committed against the same victim as the instant offense.

The Sentencing Guidelines database for FY2014 and FY2015 indicates that 488 offenders were convicted of a felony under § 18.2-57.2(B) for a third or subsequent assault against a family or household member. The assault was the primary, or most serious, offense in 459 of the cases. Half (51.4%) of these offenders were sentenced to a local-responsible (jail) term with a median sentence of six months. Another 34.4% received a state-responsible (prison) term, for which the median sentence was 1.5 years. The remaining 14.2% did not receive an active term of incarceration to serve after sentencing.

According to the Circuit Court Case Management System (CMS) for FY2014 and FY2015, 45 offenders were convicted of a Class 6 felony under §§ 16.1-253.2 and 18.2-60.4 for violating a protective order (as the primary offense). Of these, one offender (2.2%) did not receive an active term of incarceration to serve after sentencing. Another 60.0% received a local-responsible (jail) term, with a median sentence of six months. The remaining 37.8% received a state-responsible (prison) term, for which the median sentence was three years. Circuit court data also indicate that there were no felony convictions under § 18.2-60.3 for stalking during this time period.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By establishing a new Class 6 felony offense, the proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing data sources do not contain sufficient detail to identify instances in which the victim of the prior offense was the same person as the victim of the instant offense. As a result, the number of additional felony convictions that may result from enactment of the proposal cannot be estimated; therefore, the magnitude of the impact on prison bed space needs cannot be determined.

**Local adult correctional facilities.** The proposal is also expected to increase the future need for local-responsible (jail) beds, but the magnitude of the impact cannot be determined.

**Adult community corrections programs.** 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. Data are not available to estimate the net impact on local or state community corrections resources that may result from the proposal.

**Virginia's sentencing guidelines.** As a new felony offense, felony convictions under the proposed § 18.2-60.6 would not be covered by the sentencing guidelines as the primary offense. Such a conviction,

however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines is necessary under the proposal.

**Juvenile correctional centers.** According to the Department of Juvenile Justice, the proposal is not expected to increase juvenile correctional center 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.

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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 665 of the 2015 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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