



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 886
As Engrossed
(Patron Prior to Engrossment – Albo)

LD#: 16103549

Date: 2/17/2016

Topic: Stalking

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$81,914 (3 beds)
- **Local Adult Correctional Facilities:**
\$1,783 (less than 1 bed)
- **Adult Community Corrections Programs:**
Cannot be determined

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

* Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposal amends § 18.2-60.3, relating to stalking. Under current *Code*, it is a Class 1 misdemeanor to engage in conduct on more than one occasion that is intended to instill the fear of death, injury, or sexual assault in another person or a member of his or her family or household. The proposal increases the penalty for a misdemeanor conviction for stalking to a Class 6 felony if the offender has previously been convicted of stalking in the past five years.

Stalking is currently 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.

Analysis:

During fiscal year (FY) 2014 and FY2015, a total of 208 offenders were convicted of a misdemeanor stalking offense (as the primary, or most serious, offense) in General District Court, Juvenile and Domestic Relations Court, or Circuit Court. Examining court data for FY2010 through FY2015 reveals that six offenders had one prior misdemeanor conviction under § 18.2-60.3 within the past five years and therefore would be subject to the proposed felony enhancement. While one of these offenders did not receive an active term of incarceration to serve after sentencing, the remaining five offenders were sentenced to local-responsible (jail) terms, with a median sentence of two months.

According to the Circuit Court Case Management System (CMS) for FY2010 through FY2015, no offenders were convicted under § 18.2-60.3 for stalking following a prior assault/protective order

conviction involving the same victim within the past five years. However, five offenders were sentenced for a Class 6 felony for a third stalking offense within five years. Of these, one offender (20%) did not receive an active term of incarceration to serve after sentencing. Two offenders (40%) received local-responsible (jail) terms, with a median sentence of approximately 3.3 months. The remaining two offenders (40%) received state-responsible (prison) terms, for which the median sentence was 2.5 years.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of an existing Class 6 felony, the proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. The impact on state-responsible (prison) beds is estimated to be three beds statewide by FY2022. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$81,914.

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

| FY17 | FY18 | FY19 | FY20 | FY21 | FY22 |
|------|------|------|------|------|------|
| 1 | 2 | 2 | 3 | 3 | 3 |

Local adult correctional facilities. The proposal is also expected to increase the future need for local-responsible (jail) beds. The impact on local-responsible (jail) beds is estimated to be less than one bed by FY2022 (state costs: \$1,783; local costs: \$2,621).

Adult community corrections programs. Raising a crime from a Class 1 misdemeanor to a Class 6 felony may 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. The sentencing guidelines do not cover felony violations of § 18.2-60.3. However, a conviction for such an offense may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the sentencing guidelines would be 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.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$81,914 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 2015.
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 2015.

3. Cost per prison bed was assumed to be \$31,406 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 FY2014 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$30.57 per day or \$11,166 per year. The local cost was calculated by using the daily expenditure cost of \$78.53 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 \$44.93 per day or \$16,411 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. Eligible offenders were identified as those whose primary offense was a misdemeanor conviction for violating § 18.2-60.3 in Juvenile and Domestic Relations Court, General District Court, or Circuit Court who had one prior misdemeanor conviction under § 18.2-60.3 for stalking.
2. To the extent possible, the analysis excluded offenders who had previously been subject to the felony enhancements in § 18.2-60.3 for a third or subsequent violation and who would already be eligible for prosecution under existing felony penalty enhancements based on their prior record.
3. It was assumed that prosecutors would charge all eligible offenders under the enhanced felony provisions.

Assumptions relating to sentencing

1. The impact of the proposed legislation, which would be effective on July 1, 2016, is phased in to account for case processing time.
2. 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, 2014. For person crimes, this rate was 8.8%.
3. To gauge the impact on sentencing, it was assumed that the distribution of sentences for the affected cases will be similar to the distribution of sentences for cases subject to the existing Class 6 felony penalty.

Limitations

1. The Circuit Court Case Management System does not include cases from Fairfax or Alexandria. Although Virginia Beach left the system in FY2009, it rejoined the system in October 2014.
2. The Juvenile and Domestic Relations District Court (JDR) data used for the current analysis only include adults convicted in JDR.

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