



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1074 ***(Patron – Heretick)***

LD#: 18100371

Date: 11/8/2017

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 Direct Care:**
Cannot be determined**
- **Juvenile Detention Facilities:**
Cannot be determined**

*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 836 of the 2017 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 §§ 16.1-253.1, 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. Currently, these provisions list the conditions to which a respondent may be subjected when a magistrate or judge issues a protective order, including preliminary and emergency protective orders. Under the proposal, these lists would be expanded to allow the court to include a condition prohibiting contacts by the petitioner or allegedly abused person with the respondent, as the court deems appropriate.

Under § 16.1-279.1, a violation of a protective order issued under this section constitutes contempt of court, except as otherwise provided in § 16.1-253.2. Section 16.1-253.2 specifies criminal 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, or subsection B of § 20-103. Specifically, § 16.1-253.2 establishes a Class 1 misdemeanor for cases in which the respondent violates a prohibition relating to going or remaining upon property, further acts of family abuse, committing a criminal offense, or contact between the respondent and certain individuals. Under the proposal, this penalty would also apply to violations of protective orders that prohibit contact by the allegedly abused person with the respondent. If an individual is convicted of a second offense of violating a protective order within five years of the prior conviction when either offense was based on an act or threat of violence, a mandatory minimum term of confinement of 60 days applies. Any person convicted of a third or subsequent offense of violating a protective order in 20 years (with at least one involving an act or threat of violence) is guilty of a Class 6 felony. An individual convicted of a felony offense for a third or subsequent violation of a protective order is also subject to a six-month mandatory minimum term of incarceration under § 16.1-253.2.

Section 18.2-60.4 specifies penalties for any violation of a protective order issued pursuant to §§ 19.2-152.8, 18.2-152.9, and 19.2-152.10. In 2011, the General Assembly modified § 18.2-60.4 to make the punishment for violations of this section mirror the penalties prescribed in § 16.1-253.2.

Analysis:

According to the Supreme Court of Virginia, a total of 82,914 protective orders were granted in calendar year 2016 (this figure includes emergency protective orders, preliminary protective orders, and protective orders).

Existing data sources do not contain sufficient detail to identify the number of individuals who would be affected by the proposal. However, affected offenders may be sentenced similarly to those currently convicted of a Class 6 felony under §§ 16.1-253.2 or 18.2-60.4 for a third or subsequent violation of a protective order within 20 years.

According to Circuit Court Case Management System (CMS) data for fiscal year (FY) 2016 and FY2017, 43 offenders were convicted of a Class 6 felony under §§ 16.1-253.2 or 18.2-60.4 for a third or subsequent protective order violation. This was the primary, or most serious, offense in 34 of the cases. The majority (76.5%) of these received a local-responsible (jail) term, with a median sentence of six months. The remaining 23.5% were sentenced to a state-responsible (prison) term. The median sentence length for these offenders was 2.5 years.

Impact of Proposed Legislation:

State adult correctional facilities. Because it expands the applicability of existing felony offenses, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal. As a result, the magnitude of the impact on prison beds cannot be quantified.

Local adult correctional facilities. Similarly, the proposal may also increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be determined.

Adult community corrections resources. Because the proposal could result in felony 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 cannot be quantified.

Virginia's sentencing guidelines. Currently, felony violations of protective orders under §§ 16.1-253.2 or 18.2-60.4 are not covered by the guidelines when these crimes are the primary, or 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 direct care. According to the Department of Juvenile Justice (DJJ), the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

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 836 of the 2017 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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