



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1580 **Amendment in the Nature of a Substitute** ***(Patron Prior to Substitute – Cline)***

LD#: 18107906

Date: 3/1/2018

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 § 16.1-253.2 of the *Code of Virginia*, relating to protective orders. 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, and subsection B of § 20-103. Currently, under § 16.1-253.2, any person convicted of a second offense of violating a protective order when the offense is committed within five years of the prior conviction and when either the instant or prior offense was based on an act or threat of violence is guilty of a Class 1 misdemeanor. The offense requires a mandatory minimum term of confinement of 60 days. Under the proposal, the penalty would only apply if either the instant or one of the prior offenses involved were based on an assault, battery, or act or threatened act of violence as defined in subsection A of § 19.2-297.1.

Additionally, currently under § 16.1-253.2, any person convicted of a third or subsequent protective order violation within 20 years of the first conviction is guilty of a Class 6 felony if either the instant or one of the prior offenses were based on an act or threat of violence; for such cases, a mandatory minimum term of six months also applies.

The proposal expands the list of offenses that may be counted as prior convictions for the purposes of enhancing the penalty for a third conviction for violating a protective order. Under the proposal, a previous conviction for stalking in violation of § 18.2-60.3 could be counted as a prior conviction in order to raise the penalty for a third conviction for violating a protective order from a Class 1 misdemeanor to a Class 6 felony. In addition, an individual convicted of stalking who has two or more prior protective order violations would be guilty of a Class 6 felony. The felony penalty would only apply if one of the offenses involved was based on an assault, battery, or act or threatened act of violence as defined in

subsection A of § 19.2-297.1 and the instant and prior offenses arise out of separate occurrences or incidents but involve the same victim. Currently, under § 18.2-60.3, a second or subsequent conviction for stalking within five years is punishable as a Class 6 felony.

Analysis:

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 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, 36 offenders were convicted of a Class 6 felony under § 16.1-253.2 for a third or subsequent protective order violation. This was the primary, or most serious, offense in 28 of the cases. The majority (82.1%) of these received a local-responsible (jail) term, with a median sentence of six months. The remaining 17.9% were sentenced to a state-responsible (prison) term. The median sentence length for these offenders was three years.

Impact of Proposed Legislation:

State adult correctional facilities. Because it expands the list of offenses that may be counted as priors for the purposes of the felony defined in § 16.1-253.2, 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 are not covered by the guidelines when this crime is the primary, or most serious, offense. However, convictions under this statute 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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