

Department of Planning and Budget

2020 Fiscal Impact Statement

1. Bill Number: HB1167

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Wampler

3. Committee: Courts of Justice

4. Title: Protective orders on behalf of incapacitated persons.

5. Summary: This bill expands protective orders to include incapacitated persons, defined as any adult who is impaired by reason of mental illness, intellectual disability, physical illness or disability, advanced age or other causes to the extent that the adult lacks sufficient understanding or capacity to make, communicate or carry out responsible decisions concerning his or her well-being.

The bill allows an employee of a local department of social services (local department) to petition a court on behalf of an incapacitated person for a preliminary protective order in cases of family abuse or non-family abuse. The bill requires that if the court finds by a preponderance of the evidence that the person is an incapacitated person and lacks the capacity to file such petition for himself, the court must grant a guardian to represent the interests of the incapacitated person and may issue an order granting the preliminary protective order if other conditions required for the issuance of a preliminary protective order are met.

The bill also allows the employee of a local department who filed the petition to testify on behalf of the incapacitated person at any hearing for the preliminary protective order and at the full hearing on the petition. At the full hearing on the petition, the bill allows the court to issue a protective order for a specified period of time, up to a maximum of two years, if the court finds by a preponderance of the evidence that the employee of a local department who filed the petition has proven the allegation of abuse or that the incapacitated person has been subjected to an act of violence, force, or threat.

6. Budget Amendment Necessary: No

7. Fiscal Impact Estimates: Preliminary

8. Fiscal Implications: According to the Virginia Department of Social Services (VDSS), Virginia Adult Protective Services (APS) workers have attempted to file protective orders on behalf of incapacitated adults only to find out that they lacked the authority to do so. It is anticipated that APS would only use the option provided by this bill when there is no other suitable way to protect the incapacitated adult. In SFY 2019, APS documented the filing of 23 emergency orders for protective services in more than 11,000 substantiated cases of

abuse, neglect, or exploitation. The VDSS does not expect a significant increase in the filing of protective orders if this legislation is passed and any costs associated with this will be absorbed within the current appropriation.

The bill also requires the court to appoint a guardian ad litem to represent the interests of an incapacitated person when the court enters a protective order on behalf of the incapacitated person. Although this provision may have a fiscal impact on the courts (specifically the Criminal Fund), the impact cannot be determined at this time.

Under current law, a first violation of a protective order is punishable as a Class 1 misdemeanor. A second violation, within five years of the prior conviction when either offense was based on an act or threat of violence, carries a mandatory minimum term of confinement of 60 days in jail. A third or subsequent violation of a protective order, within 20 years and with at least one violation involving an act or threat of violence is punishable as 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. Because the provisions of this bill expand existing felony offenses, some with mandatory minimum sentences, this bill may result in an increase in the number of persons sentenced to jail or prison.

There is not enough information available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanant or otherwise local-responsible prisoner held in a jail and \$12.00 a day for each state-responsible prisoner. It also funds a considerable portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2019), the estimated total state support for local jails averaged \$34.07 per inmate, per day in FY 2018.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 854, 2019 Acts of Assembly, requires that a minimum impact of \$50,000 be assigned to the bill.

9. Specific Agency or Political Subdivisions Affected: Department of Social Services, Department of Corrections, local and regional jails, courts

10. Technical Amendment Necessary: No

11. Other Comments: This bill is the same as HB470 and SB574.