



## Fiscal Impact Statement for Proposed Legislation

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### Virginia Criminal Sentencing Commission

#### House Bill No. 625 (Patron – Simon)

LD#: 20102131

Date: 12/23/2019

Topic: Protective orders in cases of family abuse

#### 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 854 of the 2019 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

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#### Summary of Proposed Legislation:

The proposal amends §§ 16.1-253.1, 16.1-253.4, and 16.1-279.1 of the *Code of Virginia* pertaining to protective orders in cases of family abuse. Under § 16.1-253.2, violations of protective orders are punishable as Class 1 misdemeanors if the protective order provision(s) violated prohibit(s) the subject from: “(i) going or remaining upon land, buildings, or premises; (ii) further acts of family abuse; or (iii) committing a criminal offense, or which prohibit(s) contacts by the respondent with the allegedly abused person or family or household members of the allegedly abused person as the court deems appropriate.” 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. Furthermore, it is a Class 6 felony if the respondent 1) violates the protective order while knowingly armed with a firearm or other deadly weapon, 2) commits an assault and battery upon any party protected by the protective order resulting in bodily injury to the party or stalks any party protected by the order, or 3) furtively enters the home of any protected party while the party is present, or by entering and remaining in the home of the protected party until the party arrives. According to § 16.1-253.2, upon conviction of the violation of a protective order, the court shall enter a protective order for a specified period not exceeding two years from the date of conviction. If the protective order violation under §§ 16.1-253.1, 16.1-253.4, or 16.1-279.1 does not meet any of the above conditions, it is punishable as contempt of court.

The proposed amendments expand the definition of family abuse to include “an act of identity theft by a family or household member, as defined in § 16.1-228, in violation of § 18.2-186.3” for preliminary, permanent, and emergency protective orders in cases of family abuse.

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**Analysis:**

The proposed expansion of the term “family abuse” to include identity theft may increase the volume of protective orders issued. The threat or occurrence of “family abuse” is cited in §§ 16.1-253.1, 16.1-253.4, and 16.1-279.1 as a prerequisite for issuing protective orders.

According to e-Magistrate System and Juvenile and Domestic Relations District Court (JDR) Case Management System (CMS) data, 78,871 protective orders were issued between January 1, 2018 and June 30, 2019 under §§ 16.1-253.1, 16.1-253.4, and 16.1-279.1<sup>1</sup>. Data do not exist to estimate the number of protective orders a judge or magistrate might issue pertaining to family-related identity theft.

Affected offenders for this proposal must have committed identity theft, against a family or household member, in violation of § 18.2-186.3. According to fiscal year (FY) 2018 and FY2019 Sentencing Guidelines and Circuit Court CMS data, 362 offenders were convicted of a felony under § 18.2-186.3 during the two-year period. According to General District Court CMS data for the same time period, 1,658 offenders were convicted of a misdemeanor under § 18.2-186.3.

Affected offenders who commit protective order violations under §§ 16.1-253.1, 16.1-253.4, or 16.1-279.1 may be sentenced similarly to those currently convicted under § 16.1-253.2<sup>2</sup>. A review of FY2018 through FY2019 Circuit Court CMS data indicates that 100 offenders were convicted for a felony under § 16.1-253.2. It was the primary, or most serious, offense in 60 of the cases. The majority (60%) of offenders received a local-responsible (jail) term for which the median sentence was six months. Six offenders (10%) did not receive an active term of incarceration to serve after sentencing. The remaining 30% received a state-responsible (prison) term with a median sentence of 1.6 years.

Furthermore, JDR CMS data for the same time period indicate that 2,749 offenders were convicted of a Class 1 misdemeanor under § 16.1-253.2. The majority (80.6%) of offenders received a local-responsible (jail) term with a median sentence of 15 days. The remaining 19.4% did not receive an active term of incarceration to serve after sentencing.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Because it potentially increases the number of protective orders issued and expands the applicability of existing felony offenses for protective order violations, 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.

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<sup>1</sup> Excludes 3,546 protective orders for which the statute of issuance was uncertain.

<sup>2</sup> Assuming that the protective order condition(s) violated meet(s) a condition for punishment under § 16.1-253.2, as laid out in the summary section of this analysis.

**Adult community corrections resources.** Because the proposal could result in both misdemeanor and 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, violations of protective orders under § 16.1-253.2 are not covered by the guidelines when these crimes are the primary, or most serious, offense. However, such a conviction 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, 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.

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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 854 of the 2019 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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