



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 144

Amendment in the Nature of a Substitute

(Patron Prior to Substitute – Stuart)

LD#: 20108527

Date: 02/25/2020

Topic: Protective orders

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **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

Summary of Proposed Legislation:

The proposal amends §§ 18.2-60.4 and 19.2-152.10, relating to protective orders. Currently, under § 18.2-60.4, violations of protective orders are punishable as a Class 1 misdemeanor. 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 protective 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 § 18.2-60.4, 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.

Under the proposed subsection C of § 19.2-152.10, the court, upon conviction for an act of violence as defined in § 19.2-297.1 and upon the request of the victim or of the attorney for the Commonwealth on behalf of the victim, may enter a protective order, for any reasonable period of time, including up to the lifetime of the defendant, that the court deems necessary to protect the health and safety of the victim. An act of violence defined in § 19.2-297.1 authorizing the issuance of a protective order under this proposed provision means any of the following felony violations of Chapter 4 of Title 18.2: homicide under

Article 1 (§ 18.2-30 et seq.), mob-related felonies under Article 2 (mob-related felonies § 18.2-38 et seq.), kidnapping under Article 3 (§ 18.2-47 et seq.), assault and bodily wounding under Article 4 (§ 18.2-51 et seq.), robbery under § 18.2-58, carjacking under § 18.2-58.1, certain criminal sexual assault under Article 7 (§ 18.2-61 et seq.), and arson in violation of § 18.2-77 or § 18.2-79 (when the structure burned was occupied).

Furthermore, the proposal amends § 18.2-60.4 to specify that the punishment for violating a protective order issued pursuant to the proposed subsection C of § 19.2-152.10 would be a Class 1 misdemeanor. Other penalties currently defined under § 18.2-60.4 would not be applicable to the offender violating a protective order under the proposed subsection C of § 19.2-152.10.

Analysis:

A review of FY2018 through FY2019 Circuit Court Case Management System (CMS) data indicates that 28 offenders were convicted for a felony under § 18.2-60.4. It was the primary, or most serious, offense in 21 of the cases. The majority (71.4%) of offenders received a local-responsible (jail) term for which the median sentence was six months. One offender (4.8%) did not receive an active term of incarceration to serve after sentencing. The remaining 23.8% received a state-responsible (prison) term with a median sentence of 1.6 years.

Furthermore, General District Court Case Management System data for the same time period indicate that 603 offenders were convicted of a misdemeanor under § 18.2-60.4. It was the primary offense in all of the cases. The majority (76.8%) of offenders received a local-responsible (jail) term with a median sentence of 19 days. The remaining 23.2% did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. The proposed legislation is unlikely to increase the future state-responsible (prison) bed space needs of the Commonwealth. While the proposal expands the number of offenders who are subject to the issuance of a protective order under the proposed subsection C of § 19.2-152.10, it does not expand the applicability of existing felony offenses. As a result, the proposal is not expected to affect the state-responsible population.

Local adult correctional facilities. By expanding the applicability of existing misdemeanor offenses, the proposal may increase local-responsible (jail) bed space needs. Because the number of new convictions that may result from enactment of the proposal cannot be determined, the magnitude of the impact on jail bed space needs cannot be estimated.

Adult community corrections resources. Because the proposal could result in convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. 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 § 18.2-60.4 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.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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