



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

### House Bill No. 1111 (Patron – Hudson)

LD#: 20102688

Date: 1/10/2020

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 adds § 18.2-60.6 (relating to protective orders) to the *Code of Virginia* and amends §§ 16.1-253.2, 17.1-513, 18.2-60.4, 18.2-60.5, 18.2-119, and 18.2-308.1:4. Currently, under §§ 18.2-60.4 and 16.1-253.2<sup>1</sup>, 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 and 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.

Under the proposed § 18.2-60.6, the court, upon finding a person guilty of one of the specified felony offenses, may enter a protective order, for any period of time, including up to the lifetime of the

<sup>1</sup> Protective orders issued pursuant to §§ 16.1-253.1, 16.1-253.4, and 16.1-279.1 are punishable under § 16.1-253.2 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,” or for any of the other conditions listed in this paragraph. Otherwise, violations under §§ 16.1-253.1, 16.1-253.4, and 16.1-279.1 are punishable as contempt of court.

defendant, that the court deems necessary to protect the health and safety of the victim. The proposal defines an offense authorizing the issuance of a protective order under this provision as any felony violation of § 16.1-253.2 (violation of a protective order), or felony violation of any of the following articles of Chapter 4 of Title 18.2: Article 1 (relating to homicide), Article 3 (relating to kidnapping), Article 4 (relating to assault and bodily wounding), Article 6 (relating to extortion and other threats), and Article 7 (relating to criminal sexual assault). A violation of the protective order issued under the proposed § 18.2-60.6 would be a Class 1 misdemeanor. The penalties under §§ 18.2-60.4 and 16.1-253.2 for subsequent protective order violations would not apply to protective orders issued under § 18.2-60.6.

Furthermore, the proposal amends § 18.2-60.5 (relating to the unauthorized use of an electronic tracking device), § 18.2-119 (relating to trespassing when forbidden to do so), and § 18.2-308.1:4 (relating to purchasing or transporting a firearm while subject to a protective order) to include the proposed § 18.2-60.6.

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**Analysis:**

Available data indicate the number of offenders who have been found guilty of an offense authorizing the issuance of a protective order under the proposed § 18.2-60.6. Sentencing Guidelines data for fiscal year (FY) 2018 and FY 2019 indicate that 5,839 offenders were convicted of a felony under Article 1, Article 3, Article 4, Article 6 (not including § 18.2-60.4), or Article 7 of Chapter 4 of Title 18.2. Additionally, according to the Case Management System (CMS) for Circuit Court, 81 offenders were convicted of a felony protective order violation under § 16.1-253.2 or § 18.2-60.4 during the same time period. In sum, during the two-year period, 5,920 offenders were found guilty of an offense authorizing the issuance of a protective order under the proposed § 18.2-60.6 and could be affected if the proposal were enacted.

While data is not sufficient to identify the number of individuals who would be made subject to a protective order under the proposed § 18.2-60.6, violations of such orders could be punished similarly to Class 1 misdemeanor convictions for protective order violations under § 18.2-60.4. General District Court CMS data for FY18 and FY19 indicate that 603 offenders were convicted of a misdemeanor § 18.2-60.4. 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.

Data from the General District Court CMS for FY2018-FY2019 indicate that there was one misdemeanor conviction under § 18.2-60.5 for the unauthorized use of an electronic tracking device. It was the primary offense in the case. The offender did not receive an active term of incarceration to serve after sentencing.

The same data show that there were 8,521 convictions under § 18.2-119 for trespassing after being forbidden to do so. Of these, 69.2% did not receive an active term of incarceration to serve after sentencing. The other 30.8% received a local-responsible (jail) term for which the median sentence was approximately one month. Furthermore, the data indicate that there were 117 misdemeanor convictions under § 18.2-308.1:4(A) for purchasing or transporting a firearm while subject to a protective order, etc.<sup>2</sup> Approximately one-third (35.0%) of these offenders received local-responsible (jail) terms with a median sentence of one month. The remaining offenders (65.0%) did not receive an active term of incarceration to serve after sentencing.

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<sup>2</sup> Note that while the proposal amends § 18.2-308.1:4(A) to include violations of protective orders issued under § 18.2-60.6, all subjects of § 18.2-60.6 protective orders would be convicted felons. Under § 18.2-308.2(A), it is a Class 6 felony for a convicted felon to possess or transport a firearm. Therefore, subjects of the proposed protective orders who purchase or transport firearms would likely be convicted of a felony under § 18.2-308.2(A) as the primary offense rather than § 18.2-308.1:4(A).

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Because violations of protective orders issued under the proposed § 18.2-60.6 would not be subject to the felony violations under §§ 18.2-60.4 and 16.1-253.2, the proposal is not expected to increase the future state-responsible (prison) bed space needs of the Commonwealth.

**Local adult correctional facilities.** Because it creates new Class 1 misdemeanor offenses and expands the applicability of existing misdemeanor offenses for protective order violations, the proposal may increase the future local-responsible (jail) bed space needs of the Commonwealth. However, existing databases do not provide sufficient detail to estimate the number of new misdemeanor convictions likely to result from enactment of the proposal. Therefore, the magnitude of the impact on jail beds cannot be quantified.

**Adult community corrections resources.** Because the proposal could result in misdemeanor 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.** Violations of protective orders under the proposed §18.2-60.6 would not be 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 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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