



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1899 ***(Patron – Hope)***

LD#: 23100625

Date: 11/16/2022

Topic: Definition of a family or household member

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 2 of the Acts of Assembly of 2022, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

Summary of Proposed Legislation:

The proposal amends § 16.1-228 to expand the definition of “family or household member” to include step-brothers and step-sisters of a person, as well as any individual who is a guardian, legal custodian, or other person standing in loco parentis of the person, or is a ward or dependent of such individual, regardless of whether such individual resides in the same home with the person. The definition of “family or household member” in § 16.1-228 applies to all of Chapter 11 of Title 16.1 (Juvenile and Domestic Relations Courts), which includes violations of protective orders issued pursuant to §§ 16.1-253.1, 16.1-253.4, and 16.1-279.1. The definition in § 16.2-228 is specifically referenced in § 18.2-46.3 (recruitment of persons for a criminal street gang), § 18.2-57.2 (assault and battery against a family or household member), § 18.2-60.3 (stalking), and § 19.2-81.3 (arrest without a warrant in certain cases). As such, the proposal would expand the applicability of existing felonies and misdemeanors without increasing penalties.

Currently, under § 18.2-57.2, assault and battery against a family or household member is punishable as a Class 1 misdemeanor. The penalty is elevated to a Class 6 felony if it is alleged in the warrant, petition, information or indictment that the offender has been previously convicted of any two of the specified offenses against a family or household member. Stalking in violation of § 18.2-60.3 is punishable as a Class 1 misdemeanor for the first conviction and a Class 6 felony for any second or subsequent conviction within five years.

Under § 16.1-253.2¹, many violations of protective orders are punishable as Class 1 misdemeanors. 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.

Analysis:

While the number of individuals who may be affected by the proposal cannot be determined, such offenders may be sentenced similarly to those who are currently convicted under existing provisions that define family or household member by referencing § 16.2-228 (see table below).

Offenders Convicted of Select Offenses, FY2021-FY2022

Primary Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
Assault and battery against a family member, misdemeanor (§ 18.2-57.2) ²	8,824	64.3%	35.7%	1.3 mos.	N/A	N/A
Assault and battery against a family member 3 rd offense, felony (§ 18.2-57.2)	309	18.4%	47.9%	7.0 mos.	33.7%	1.5 yrs.
Stalking, misdemeanor (§ 18.2-60.3(A))	140	47.1%	52.9%	2.0 mos.	N/A	N/A
Stalking, second offense within 5 years, felony (§ 18.2-60.3(B))	6	0.0%	83.3%	6.0 mos.	16.7%	3.8 yrs.
Protective order violation, misdemeanor (§ 16.1-253.2) ³	2,602	17.5%	82.5%	0.3 mos.	N/A	N/A
Protective order violation, felony (§ 16.1-253.2)	75	5.3%	60.0%	6.0 mos.	34.7%	2.0 yrs.

² A total of 8,824 offenders were convicted of a Class 1 misdemeanor under § 18.2-57.2 (as the primary, or most serious, offense) in General District Court, Juvenile and Domestic Relations Court, or Circuit Court. Of the total, 90.6% of the offenders were sentenced in Juvenile and Domestic Relations (JDR) Court. Percentages and median sentence length are reflective of only the JDR convictions.

³ Includes convictions in JDR and GDC courts.

Note: Analysis is based on cases in which the specified offense was the primary, or most serious, offense in the sentencing event.

Source: Supreme Court of Virginia - Circuit Court Case Management System (CMS), FY2021-FY2022

Supreme Court of Virginia - General District Court Case Management System (CMS), FY2021-FY2022

Supreme Court of Virginia - Juvenile & Domestic Relations Case Management System (CMS), FY2021-FY2022

Virginia Criminal Sentencing Commission - Sentencing Guidelines Database, FY2021-FY2022

¹ 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 prohibits contacts by the respondent with the allegedly abused person or family or household members of the allegedly abused person as the court deems appropriate.” Otherwise, violations under §§ 16.1-253.1, 16.1-253.4, and 16.1-279.1 are punishable as contempt of court. This analysis assumes that violations of the proposed protective order condition are within judicial discretion to be punished under § 16.1-253.2.

According to Circuit Court CMS data for FY2021 through FY2022, one offender whose primary offense was statutory burglary (§ 18.2-91) was convicted of recruiting a juvenile family member for a criminal street gang (§ 18.2-46.3) as an additional offense at sentencing. On this charge, the offender was sentenced to serve 12 months in jail.

According to the e-Magistrate System, 37,687 emergency protective orders related to family abuse were issued in calendar year 2021. According to the Juvenile and Domestic Relations District Court Case Management System, 16,024 protective orders and preliminary protective orders were issued under §§ 16.1-253.1 and 16.1-279.1 in calendar year 2021.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the definition of family and household members, the proposal may result in additional felony convictions and 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. Therefore, the magnitude of the impact on prison beds cannot be quantified.

Local adult correctional facilities. Similarly, the proposal may also increase the local-responsible (jail) bed space needs of the Commonwealth. However, the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's Sentencing Guidelines. Felony convictions under § 18.2-57.2 are currently covered by Guidelines. Other felony convictions impacted by the change in definition under the proposed sections of the *Code* are not covered by the Guidelines as the primary, or most serious, offense. Such convictions, however, could augment the Guidelines recommendation (as additional offenses) if the most serious offense at sentencing is covered by the Guidelines. No adjustment to the Guidelines is 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 cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I, 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.