



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 1864

(Patron – Wittman)

LD#: 07-4601554

Date: 11/27/2006

Topic: Stalking, subsequent conviction within five years

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$135,049 (5 beds)
- **Local Adult Correctional Facilities:**  
-\$10,635 (-1 bed)
- **Adult Community Corrections Programs:**  
Cannot be determined

- **Juvenile Correctional Centers:**  
Cannot be determined
- **Juvenile Detention Facilities:**  
Cannot be determined

#### Summary of Proposed Legislation:

The proposal amends § 18.2-60.3 by increasing the penalty for a second or subsequent conviction for stalking within five years from a Class 1 misdemeanor to a Class 6 felony.

#### Analysis:

According to Calendar Year (CY) 2004 and CY2005 Local Inmate Data System (LIDS) data, 13 offenders held pre- or post-trial in jail were convicted of Class 1 misdemeanor stalking offenses with a known prior misdemeanor stalking conviction. Of those convicted, four (31%) received no additional term of incarceration (time served), and the remaining nine (69%) received local-responsible (jail) terms, with a median sentence of four months.

Based on CY2002 through CY2005 LIDS data, there were six offenders held pre- or post-trial in jail convicted under the felony provision of § 18.2-60.3 for a third or subsequent stalking offense within five years (these are cases in which this offense was the primary, or most serious, offense at sentencing). One offender was sentenced to a state-responsible (prison) sentence of five years as the result of a jury trial, the remaining cases were local-responsible (jail) sentences.

#### Impact of Proposed Legislation:

**State adult correctional facilities.** By raising the penalty structure for a second conviction of stalking within five years, the proposal will increase then need for state-responsible (prison) beds. The estimated impact is five beds by 2013. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$135,049.

#### Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY08	FY09	FY10	FY11	FY12	FY13
1	2	3	4	5	5

**Local adult correctional facilities.** Based on the same methodology, the estimated impact on local-responsible (jail) bed space needs is one fewer jail bed statewide, for a savings to the state of \$10,635 and \$9,834 to the localities.

#### **Estimated Six-Year Impact in Local-Responsible (Jail) Beds**

FY08	FY09	FY10	FY11	FY12	FY13
0	0	-1	-1	-1	-1

**Adult community corrections programs.** The proposal may have an impact on the adult community corrections programs. Although the extent of the impact cannot be determined, there may be a shift from local to state probation services, and the impact may be delayed by longer felony sentences.

**Virginia's sentencing guidelines.** Convictions under § 18.2-60.3 are not covered by Virginia's sentencing guidelines as the primary (most serious) offense at event. However, convictions under this statute may augment the guidelines recommendation if a covered offense is the most serious at conviction. No adjustment to the guidelines is needed.

**Juvenile correctional centers.** The Department of Juvenile Justice (DJJ) reports that the impact of the proposal cannot be determined. Under current law, a judge may only commit for the existing misdemeanor if the juvenile offender has previously been adjudicated delinquent for a felony or for three Class 1 misdemeanors (not part of a common act or transaction). Under the proposal, though, a judge has the ability to commit a juvenile offender for the proposed felony offense. Furthermore, if the proposal is enacted, the minimum confinement assigned under the Department's Length of Stay (LOS) guidelines will be 6 to 12 months for the felony violation.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal may have an impact on the bed space needs of juvenile detention facilities, but the impact cannot be determined.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$135,049 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.**

#### **Assumptions underlying the analysis include:**

##### **General Assumptions**

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary's Committee on Inmate Forecasting in 2006.
2. New cases representing state-responsible sentences were based on forecasts developed for the Secretary's Committee on Inmate Forecasting and approved in July 2006.
3. Cost per prison bed was assumed to be \$25,709 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*
4. Cost per jail bed was based on the Compensation Board's FY2005 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.37 per day or \$10,362 per year. The local cost was calculated by using the daily expenditure cost of \$59.24 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$26.23 per day or \$9,581 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

##### **Assumptions relating to sentence lengths**

1. The impact of the proposed legislation, which would be effective on July 1, 2007, is phased in to account for case processing time.
2. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the

average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2005. For person crimes, this rate was 10.47%.

3. For persons convicted of a misdemeanor offense with a known prior conviction for § 18.2-60.3 within five years, projected sentences were randomly drawn from sentences for persons convicted under existing felony stalking provisions.

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