



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1842

(Patron – Griffith)

LD#: 09-6634520

Date: 1/22/2009

Topic: Emergency protective orders

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined, likely to negligible
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

Summary of Proposed Legislation:

The proposal amends § 16.1-253.4 to require judges and magistrates to issue an ex parte emergency protective order in cases of aggravated sexual battery committed against a family or household member in the same manner now required for cases of physical assault and battery involving a family or household member.

Section 16.1-253.2 specifies the penalties for violations of protective orders issued per § 16.1-253.4. Violating a protective order three or more times in 20 years, assaulting a protected person causing serious physical injury, and entering the home of a protected person are Class 6 felonies. Other violations of a protective order are Class 1 misdemeanors, with the second violation carrying a mandatory minimum penalty of 60 days.

By increasing the number of individuals subject to emergency protective orders, the proposal may increase the number of individuals who violate protective orders issued per § 16.1-253.4. In addition, §§ 18.2-308.1:4 and 18.2-119 prohibit the purchase or transport of a firearm by individuals subject to protective orders as well as trespassing in violation of a protective order, respectively.

Analysis:

According to the fiscal year (FY) 2006 and FY2007 Pre/Post-Sentence Investigation (PSI) database, 19 offenders were convicted under the felony provisions of § 16.1-253.2 for violating a protective order. The violation was the primary, or most serious, offense in six of these cases. Three of the six offenders received a state-responsible (prison) term, with a median sentence of two years; the remaining three were not given an active term of incarceration to serve. There is no information to distinguish violations of emergency protective orders from other protective order violations.

According to the calendar year (CY) 2005 and CY2006 Local Inmate Data System (LIDS), there were 1,504 persons held pre- or post-trial in jail who were convicted under the misdemeanor provisions of

§ 16.1-253.2 for a violating a protective order. The majority (86%) received a jail term, with a median sentence length of slightly less than one month. There is no information to distinguish violations of emergency protective orders from other protective order violations.

According to FY2006 and FY2007 Pre/Post-Sentence Investigation data, 162 offenders were convicted of aggravated sexual battery (§ 18.2-67.3) where the victim was recorded as a family member. Under the proposal, judges and magistrates would be required to issue emergency protective orders in these cases (as well as other cases where the offender was charged with aggravated sexual battery, but later convicted of a lesser offense).

Impact of Proposed Legislation:

State adult correctional facilities. Expanding § 16.1-253.4 to include aggravated sexual battery against a family or household member will increase the number of individuals who are subject to protective orders. As a result, the proposal may increase the number of individuals who subsequently violate protective orders. In this way, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Because conviction data does not distinguish between violations of emergency protective orders and violations of other types of protective orders, the impact cannot be quantified. However, given the total number of felony convictions for violating protective orders during a recent two-year period, the maximum potential impact of the proposal would be approximately one bed by FY2015.

Local adult correctional facilities. Similarly, the proposal may increase the need for local-responsible (jail) beds. The impact cannot be quantified. However, given the total number of felony and misdemeanor convictions for violating protective orders during a recent two-year period, the maximum potential impact of the proposal would be approximately 14 beds by FY2015.

Adult community corrections resources. Because the proposal could result in felony and 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. While the impact on community corrections resources cannot be quantified, it is expected to be minimal.

Virginia's sentencing guidelines. Currently, offenses under § 16.1-253.2 are not covered by the sentencing guidelines as the primary (or most serious) offense in a sentencing event. However, convictions under this statute may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines.

Juvenile correctional centers. According to the Department of Juvenile Justice, the proposal is not expected to increase juvenile correctional center bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

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 and is \$0 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 of Public Safety's Committee on Inmate Forecasting in 2008.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety's Committee on Inmate Forecasting and approved in July 2008.
3. Cost per prison bed was assumed to be \$27,294 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 FY2007 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.77 per day or \$10,509 per year. The local cost was calculated by using the daily expenditure cost of \$62.56 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 \$29.71 per day or \$10,853 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 offenders

1. The maximum increase in the number of offenders sentenced for violation of an emergency protective order as a result of the proposal was estimated using conviction data for assault and battery of a family or household member (the offense that is currently the basis for emergency protective orders) and conviction data for aggravated sexual battery (the crime added by the proposal). According to CY2005 and CY2006 LIDS data, 6,034 offenders were sentenced for assaulting a family or household member (§ 18.2-57.2). FY2006 and FY2007 PSI data reveal that 468 offenders were sentenced for aggravated sexual battery (§ 18.2-67.3). By adding aggravated sexual battery, convictions for offenses requiring emergency protective orders would increase by 7.8% (468/6,034). Therefore, it was assumed that the number of felony and misdemeanor violations of emergency protective orders would also increase by 7.8%. Because conviction data does not distinguish between violations of emergency protective orders and violations of other types of protective orders, the maximum impact assumes that all known convictions for protective order violations are violations of emergency orders. Under this assumption, the proposal could produce, at most, approximately 1 additional felony and 58 additional misdemeanor convictions a year by FY2015.

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2009, is phased in to account for case processing time.
2. To gauge the impact on sentencing, it was assumed that the distribution of sentences for the affected cases will be similar to the distribution of sentences under the existing felony and misdemeanor penalties defined in § 16.1-253.2 for violating protective orders.
3. 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, 2007. For person crimes, this rate was 10.7%.

protord01_6634