



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 218

(Patron – McClellan)

LD#: 10100381

Date: 12/8/2009

Topic: Stalking, subsequent conviction within five years

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$642,672 (23 beds)
- **Local Adult Correctional Facilities:**  
-\$77,758 (-7 beds)
- **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 certain stalking offenses. Under the proposal, a second or subsequent conviction for stalking within five years is increased from a Class 1 misdemeanor to a Class 6 felony. In addition, the penalty for stalking when there is a protective order that prohibits contact between the offender and the victim (or any member of the victim's family/household) is increased from a Class 1 misdemeanor to a Class 6 felony.

Currently, the penalty for a third conviction for stalking within five years is a Class 6 felony; all other stalking crimes under § 18.2-60.3 are Class 1 misdemeanors. In addition, under § 18.2-60.4, it is a Class 1 misdemeanor to violate a protective order issued in stalking cases (issued under §§ 19.2-152.8, 19.2-152.9 or 19.2-152.10, et al.).

#### Analysis:

According to the CY2007 and CY2008 Local Inmate Data System (LIDS), there were 14 offenders charged with both stalking and a violation of a protective order (excluding a stalking protective order under § 18.2-60.4) committed on the same date who were convicted of one, or both, of the crimes. The majority (75%) of these received a local-responsible (jail) term, for which the median sentence was 12 months; five of these were given the maximum allowable jail term of 12 months for the single offense, while four of these offenders were sentenced to terms of more than 12 months following conviction for multiple misdemeanors.

Under the proposal, a second or subsequent conviction for stalking would become a Class 6 felony. For the two year period, 22 offenders, sentenced for misdemeanor crimes only, were identified as qualifying for felony prosecution under the proposal who did not appear to qualify for felony prosecution under the existing statute.

According to FY2005 through FY2009 Circuit Court Automated Information System (CAIS) data, 38% of offenders convicted of a felony under § 18.2-60.3(B) for a third or subsequent stalking (as the

primary, or most serious, offense) were given a state-responsible (prison) term. The median sentence in these cases was 2.5 years.

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### Impact of Proposed Legislation:

**State adult correctional facilities.** By raising the penalty structure for a second stalking conviction within five years and creating a new felony for stalking in violation of a protective order, the proposal will increase the need for state-responsible (prison) beds. The impact is estimated to be 23 beds by 2016. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$642,672.

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

FY11	FY12	FY13	FY14	FY15	FY16
8	16	19	22	23	23

**Local adult correctional facilities.** Because some offenders would receive a prison sentence instead of a jail sentence, the proposal is expected to decrease local-responsible (jail) bed space needs by seven beds statewide, for a savings to the state of \$77,758 and \$85,888 to the localities.

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

FY11	FY12	FY13	FY14	FY15	FY16
-4	-7	-7	-7	-7	-7

**Adult community corrections resources.** Raising a crime from a Class 1 misdemeanor to a Class 6 felony may decrease the demand for local community-based probation services and increase the need for state community corrections resources. The *Code of Virginia*, however, allows judges to utilize local community-based probation programs for Class 5 and Class 6 felons as well as misdemeanants. The net impact of the proposal on local versus state community corrections resources cannot be estimated.

**Virginia's sentencing guidelines.** Convictions under § 18.2-60.3 are not covered by the sentencing guidelines as the primary (most serious) offense in a sentencing 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 would be necessary as a result of the proposal.

**Juvenile correctional centers.** Because the proposal increases the penalty for certain acts from a misdemeanor to a felony, the proposal could result in additional commitments to the Department of Juvenile Justice (DJJ). Existing *Code* specifies that a juvenile is eligible for commitment if he is adjudicated for a felony, has a prior felony adjudication, or has accumulated a total of four Class 1 misdemeanor adjudications. If a juvenile were committed to DJJ for the proposed felony offense, the minimum confinement assigned under the Department's Length of Stay (LOS) guidelines would be 6 to 12 months. The number of additional juveniles who may be committed cannot be determined. Therefore, DJJ is not able to assess the impact of the proposal on juvenile correctional center bed space needs.

**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 magnitude of the impact cannot be determined.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$642,672 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 of Public Safety's Committee on Inmate Forecasting in 2009.
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 2009.
3. Cost per prison bed was assumed to be \$27,700 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 FY2008 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$29.93 per day or \$10,932 per year. The local cost was calculated by using the daily expenditure cost of \$67.99 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 \$33.06 per day or \$12,075 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, 2010, 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, 2008. For person crimes, this rate was 10.4%.
3. It was assumed that prosecutors would charge all eligible offenders with the proposed felony.
4. Offenders affected by the proposal were assumed to receive sentences similar to offenders currently convicted for Class 6 felony stalking offenses.

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