



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 288

(Patron – Griffith)

LD#: 10100160

Date: 12/30/2009

Topic: Stalking

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
At least \$59,203 (2 beds)
- **Local Adult Correctional Facilities:**  
Cannot be determined
- **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 expanding the conditions that define when stalking is a crime and increasing the penalty for stalking under certain circumstances.

Under current *Code*, it is a Class 1 misdemeanor to engage in conduct on more than one occasion that is intended to instill the fear of death, injury, or sexual assault in another person or a member of his or her family or household. A third conviction under the stalking provision within five years is a Class 6 felony.

Under the proposal, the Class 1 misdemeanor is expanded to include conduct that is described above, committed on a single occasion, if the offender verbally threatens the victim with death, injury, or sexual assault. The proposal also increases the penalty for stalking from a Class 1 misdemeanor to a Class 6 felony in cases in which the offender has a previous conviction for assaulting a family or household member (§ 18.2-57.2) within the last five years.

All of the other proposed changes have a technical or clarifying nature.

#### Analysis:

According to the Local Inmate Data System (LIDS) for calendar years 2007 and 2008, four offenders were charged with stalking who had previously been convicted of an assault on a family or household member under § 18.2-57.2. All four received a local-responsible (jail) term, with sentences ranging from 1 to 12 months.

#### Impact of Proposed Legislation:

**State adult correctional facilities.** By raising the penalty structure from a Class 1 misdemeanor to a Class 6 felony for a stalking conviction under certain circumstances, the proposal will increase the need for state-responsible (prison) beds; the impact is estimated to be at least 2 beds by FY2016.

In addition, by expanding criminal stalking to include first offenses that involve verbal threats, the proposal may increase the number of offenders convicted of a Class 6 felony for a third stalking within five years; the impact of this aspect of the proposal cannot be quantified. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$59,203.

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

FY11	FY12	FY13	FY14	FY15	FY16
1	1	2	2	2	2

**Local adult correctional facilities.** The proposal has offsetting elements with respect to the impact on the local-responsible (jail) bed space needs. Raising the penalty for stalking from a Class 1 misdemeanor to a Class 6 felony under certain circumstances is expected to decrease the need for local-responsible (jail) beds, as some offenders currently sentenced to jail will, under the proposal, be given prison sentences, based on the higher penalty structure for the crime committed. However, expanding the conduct punishable as a Class 1 misdemeanor will increase the number of offenders sentenced to jail. The net impact on jail beds cannot be determined.

**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 for those offenders. 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. Moreover, expanding the Class 1 misdemeanor offense will likely increase the need for local probation services. The net impact of the proposal on local and 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. However, convictions under this statute could 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 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 at least \$59,203 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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