



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2356

(Patron – McClellan)

LD#: 11102755

Date: 1/10/2011

Topic: Stalking, subsequent conviction within five years

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$400,858 (14 beds)
- **Local Adult Correctional Facilities:**
-\$30,336 (-3 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 is increased from a Class 1 misdemeanor to a Class 6 felony in cases in which there is a protective order that prohibits contact between the offender and the victim (or any member of the victim's family or household).

Currently, the third or subsequent conviction for stalking 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 fiscal year (FY) 2009 and FY2010 data from the Local Inmate Data System (LIDS), which captures information on persons held pre- or post-trial in jail, 13 offenders were convicted of a Class 1 misdemeanor under § 18.2-60.3 for a second act of stalking. In these cases, the offender was convicted of misdemeanor offenses only (no felonies). The median local-responsible (jail) sentence for these offenders was six months. Under the proposal, these offenders could be prosecuted for a Class 6 felony.

During the same two-year period, 14 offenders (1) were 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, and (2) were ultimately convicted of one, or both, crimes. All of these offenders received a local-responsible (jail) term, for which the median sentence was 13.5 months; five offenders were given the maximum allowable jail term of 12 months for the single offense, while eight offenders were sentenced to terms of more than 12 months as a result of multiple misdemeanor convictions. Under the proposal, these offenders could be prosecuted for a Class 6 felony.

According to FY2005 through FY2010 data from the Circuit Court Automated Information System (CAIS), 27% of offenders convicted of a felony under § 18.2-60.3(B) for a third or subsequent act of 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.

The Department of Juvenile Justice (DJJ) Court Service Units serve as the point of entry into the juvenile justice system. An “intake” occurs when a juvenile is brought before a court service unit officer for one or more alleged law violations. According to the Department of Juvenile Justice (DJJ), in the past three fiscal years (FY2008-FY2010), there have been two juveniles with intakes for both stalking and a violation of a protective order that were committed on the same date.

Impact of Proposed Legislation:

State adult correctional facilities. By raising the penalty structure for a second stalking conviction and creating a new Class 6 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 14 beds by FY2017. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$400,858.

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

FY12	FY13	FY14	FY15	FY16	FY17
2	8	11	13	14	14

Local adult correctional facilities. Because some offenders would receive a prison sentence instead of the jail sentence they have in the past, the proposal is expected to decrease local-responsible (jail) bed space needs. The impact is estimated to be a decrease of three beds statewide, for a savings to the state of \$30,336 and \$33,508 to the localities.

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

FY12	FY13	FY14	FY15	FY16	FY17
-1	-3	-3	-3	-3	-3

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 (or most serious) offense. However, a conviction under this section (as an additional offense) 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.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$400,858 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 2010.
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 2010.
3. Cost per prison bed was assumed to be \$27,065 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 FY2009 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.86 per day or \$10,541 per year. The local cost was calculated by using the daily expenditure cost of \$87.30 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 \$45.75 per day or \$16,712 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. It was assumed that prosecutors would charge all eligible offenders with the proposed Class 6 felony.

Assumptions relating to sentence lengths

2. The impact of the proposed legislation, which would be effective on July 1, 2011, is phased in to account for case processing time.
3. Offenders affected by the proposal were assumed to receive sentences similar to offenders currently convicted for Class 6 felony stalking offenses.
4. 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, 2009. For person crimes, this rate was 10.6%.

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