Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1222

Enrolled

(Patrons Prior to Enrollment – Barker et al.)

LD#: Enrolled **Date:** 3/4/2011

Topic: Stalking protective orders

Fiscal Impact Summary:

- **State Adult Correctional Facilities:** $93,767 (3 beds)
- **Local Adult Correctional Facilities:** Negligible
- **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 §§ 16.1-69.55, 16.1-228, 16.1-253.1, 16.1-253.4, 16.1-279.1, 17.1-213, 17.1-272, 18.2-60.4, 19.2-81.3, 19.2-120, 19.2-152.8, 19.2-152.9, and 19.2-152.10 and adds § 19.2-152.7:1, relating to protective orders.

The proposal expands the circumstances under which an individual may request a protective order to include instances involving acts of violence, force or threat that result in bodily injury or that place one in reasonable apprehension of death, criminal sexual assault, or bodily injury. The proposal also adds § 19.2-152.7:1 to define "acts of violence, force or threat," as used in Chapter 9.1 of Title 19.2. Currently, Chapter 9.1 only applies to protective orders relating to stalking, sexual battery, and criminal offenses resulting in serious bodily injury.

The proposal increases the penalties for violating certain protective orders to make them consistent with the penalties for violating a family abuse protective order. Currently, violation of a stalking protective order under § 18.2-60.4 is a Class 1 misdemeanor. Under the proposal:

- Conviction for a second violation of certain protective orders, when the offense is committed within five years of a conviction for a prior offense and when either the instant or prior offense was based on an act or threat of violence, would have a mandatory minimum of 60 days;
- Conviction for a third or subsequent violation, when such offense is committed within 20 years of the first conviction and when either the instant or any of the prior offenses was based on an act or threat of violence, would be a Class 6 felony with a mandatory minimum sentence of six months;
- Commission of an assault and battery resulting in serious bodily injury upon a protected party would be a Class 6 felony;
- Violation of certain protective orders by furtively entering the home of the protected party while such party is present or remaining in the home until the protected party arrives would be a Class 6 felony; and
- Any person convicted for violating certain protective orders for which no mandatory minimum sentence is specified shall be sentenced to a term of confinement and shall not have his entire sentence suspended.

Finally, the proposal modifies circumstances involving the issuance of a protective order by: (1) amending the definition of "family abuse" to specifically include stalking, criminal sexual assault, forceful detention, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury; (2) establishing standards for determining the predominant physical aggressor when there is a violation of certain protective orders; (3) authorizes a law-enforcement officer to request an extension of an emergency protective order, not to exceed three days, for a person in need of protection who is physically or mentally incapable of filing a petition for a preliminary or permanent protective order; (4) modifying conditions that a judge or magistrate may place on the respondent of a protective order to include conditions to prevent acts of violence, force, or threat that result in bodily injury or that place one in reasonable apprehension of death, criminal sexual assault, or bodily injury; and (5) modifying the conditions that may be placed on a respondent of a protective order to include injury to person or property (§§ 16.1-253.1, 16.1-253.4, and 16.1-279.1).

Analysis:

The Local Inmate Data System (LIDS) captures information on persons held in Virginia's local and regional jails. According to fiscal year (FY) 2009 and FY2010 LIDS data, 63 offenders were convicted of a Class 1 misdemeanor for a first violation of a stalking protective order (these offenders had not been convicted of violating a stalking protective order within the previous five years). For these offenders, violation of the stalking protective order was the primary (or most serious) offense. All of these offenders received a local-responsible (jail) term, for which the median sentence was 5.9 months. The proposal would require all offenders convicted of violating certain protective orders to serve at least one day in jail.

During the same two-year period, 23 offenders were convicted of a Class 1 misdemeanor for a second violation of a stalking protective order within five years (as the primary offense). The median local-responsible (jail) sentence for these offenders was 6.0 months. It is not known how many of these cases involved an act or threat of violence (associated with the current or prior offense), which would make the offender subject to the proposed 60-day mandatory minimum sentence.

In addition, nine offenders were convicted for a third or subsequent violation of a stalking protective order (as the primary offense). For these offenders, the median jail sentence was 6.5 months. The number of these cases involving an act or threat of violence (associated with the current or one of the prior offenses) is not known; under the proposal, a third or subsequent violation with a current or prior act or threat of violence would be elevated to a Class 6 felony and subject to a six-month mandatory minimum sentence.

The proposal would also increase the penalties for violations of certain protective orders resulting in bodily injury and violations in which the offender enters the home of the protected party. According to FY2009 and FY2010 Sentencing Guidelines and LIDS data, no offenders were convicted for violating a stalking protective order in combination with either an assault and battery or a burglary/trespassing offense committed on the same date.

Impact of Proposed Legislation:

State adult correctional facilities. By increasing the penalty for violating some protective orders from a Class 1 misdemeanor to a Class 6 felony in certain circumstances, the proposal is expected to increase the need for state-responsible (prison) beds. The impact is estimated to be three beds by FY2017. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is $93,767.

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

FY12	FY13	FY14	FY15	FY16	FY17
0	2	3	3	3	3

Local adult correctional facilities. The proposal is expected to impact the local-responsible (jail) population in two ways. First, the proposed mandatory minimum jail sentences would likely increase the need for jail beds. Second, increasing the penalty for certain violations of some protective orders from a misdemeanor to a felony could reduce the need for jail beds, as some offenders will receive a prison sentence instead of the jail term they would have in the past. With these offsetting impacts, the net effect of the proposal is expected to be a decrease of less than one bed statewide (for a savings to the state of $4,783 and $5,284 to the localities).

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 § 18.2-60.4 are not covered by the guidelines when one of these crimes is the primary (most serious) offense. However, convictions under this statute may 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. According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is $93,767 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 all offenders convicted of a third or subsequent violation of a stalking protective order had committed an act, or made a threat, of violence as part of the current offense or in connection with one of the

prior offenses. This would make them eligible for prosecution under the proposed Class 6 felony. Further, it was assumed that all eligible offenders would be prosecuted for, and convicted of, the proposed Class 6 felony.

Assumptions relating to sentencing

1. The impact of the proposed legislation, which would be effective on July 1, 2011, is phased in to account for case processing time.
2. To gauge the impact of the proposal on the misdemeanor convictions, it was assumed that all offenders convicted of a first violation of a stalking protective order who did not receive an active term of incarceration to serve in the past will serve an effective sentence of exactly one day in jail should the proposal be enacted (the proposal specifies that the court cannot suspend the entire sentence). It was assumed that all offenders convicted of a second violation of a stalking protective order who received a sentence less than the proposed 60-day mandatory minimum term in the past will receive an effective sentence of exactly 60 days under the proposal.
3. To gauge the impact of sentencing on the cases that would be elevated to a felony, it was assumed that the distribution of sentences for the affected cases would be similar to the distribution of sentences under the existing felony and misdemeanor penalties defined in § 16.1-253.2 for violating protective orders. Offenders affected by the proposed mandatory minimum sentence were assumed to serve a sentence at least the mandatory minimum term specified in the proposal. .
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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