



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1222

Amendment in the Nature of a Substitute (Patrons Prior to Substitute – Barker et al.)

LD#: 11105271 (revised)

Date: 2/24/2011

Topic: Protective orders related to family abuse and stalking

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000*
- **Local Adult Correctional Facilities:**
Negligible
- **Adult Community Corrections Programs:**
Cannot be determined

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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 874 of the 2010 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

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 relating to family abuse and stalking protective orders.

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

- Conviction for a second violation of a stalking protective order, 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 have a mandatory minimum sentence of six months.

The proposal also provides that any person convicted for violating a stalking protective order 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, sexual assault, forcible 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 aggressor when there is a violation of a protective order involving family abuse or stalking; (3)

modifying conditions that a judge or magistrate may place on the respondent of a protective order to include conditions to prevent acts of force, violence, forceful detention, criminal sexual assault, or criminal offenses that result in bodily injury or that place one in reasonable apprehension of death, sexual assault or bodily injury; and (4) modifying the conditions that maybe 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. The information presented below is based on fiscal year (FY) 2009 and FY2010 LIDS data.

§ 18.2-60.4:

- 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 a stalking protective order to serve at least one day in jail.
- 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 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.
- Nine offenders were convicted of 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 stalking 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.

§ 16.1-253.2:

- 1,507 offenders were convicted of a Class 1 misdemeanor for violation of a protective order under § 16.1-253.2. For these offenders, violation of the protective order was the primary (or most serious) offense.
- 54 offenders were convicted of a Class 1 misdemeanor under § 16.1-253.2 for a second violation of a protective order involving an act or threat of violence (associated with the current or prior offense) within five years (as the primary offense). The majority of these offenders (94%) received a local-responsible (jail) term with a median sentence of 2.0 months.
- 23 offenders were convicted of a felony under § 16.1-253.2 for a third or subsequent violation of a protective order with a current or prior act or threat of violence (as the primary offense). The majority of these offenders (87%) received a local-responsible (jail) term with a median sentence of 9.5 months.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal may increase the need for state-responsible (prison) beds because it expands the persons and circumstances for which a protective order can be issued and the conditions that may be set in the order. This may result in additional felony convictions for violations of protective orders under § 16.1-253.2. The number of additional felony convictions likely to result from these changes is unknown; therefore, the impact of this aspect of the proposal on prison beds cannot be determined.

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. Secondly, expanding the persons and circumstances for which a protective order can be issued is expected to increase the need for jail beds. The total effect of these impacts is expected to result in an increase in future jail bed space needs.

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. The impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. Currently, offenses under §§ 16.1-253.2 and 18.2-60.4 are not covered by the guidelines when one of these crimes is the primary (most serious) offense. However, convictions under these statutes 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 proposal will not increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. According to the Department of Juvenile Justice (DJJ), the proposal will not increase bed space needs in 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; therefore, Chapter 874 of the 2010 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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