Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2211
(Patron – McClellan)

LD#: 13103602 **Date:** 1/9/2013

Topic: Stalking

Fiscal Impact Summary:

- **State Adult Correctional Facilities:** At least $23,197 (1 bed)
- **Local Adult Correctional Facilities:** At least $658 (less than 1 bed)
- **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 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 penalty for a second conviction for stalking would be increased from a Class 1 misdemeanor to a Class 6 felony in cases in which the offender has previously been convicted of assaulting a family or household member (§ 18.2-57.2), violating a protective order, or assaulting the victim of the current stalking offense within the last five years.

Analysis:

For the present analysis, data was compiled from the General District, Juvenile and Domestic Relations, and Circuit Court Case Management System[1] as well as the Local Inmate Data System (LIDS) for fiscal year (FY) 2006 through FY2012. According to these data sources, in FY2011 and FY2012, one offender was convicted of a misdemeanor stalking violation of § 18.2-60.3 and had previously been convicted of stalking and an assault on a family or household member under § 18.2-57.2 or a violation of a protective order. This offender did not receive an active term of incarceration to serve after sentencing.

According to the Circuit Court Case Management System[1] for FY2011 and FY2012, three offenders were convicted of a felony under § 18.2-60.3 as the primary, or most serious offense, during this time period. While one of these offenders was sentenced to a local-responsible (jail) term of roughly five months, the remaining two offenders received state responsible (prison) sentences of two and three years, respectively.

[1] Formerly referred to as the Court Automated Information System (CAIS).

Impact of Proposed Legislation:

State adult correctional facilities. By raising the penalty from a Class 1 misdemeanor to a Class 6 felony for a second stalking conviction under certain circumstances, the proposal will increase the need for state-responsible (prison) beds. Existing data sources do not contain sufficient detail to identify instances where a current stalking offense is directed at the same victim as a prior assault. As a result, this portion of the impact cannot be estimated. However, the number of offenders convicted of a second offense for stalking who were previously convicted of assaulting a family or household member or violating a protective order in the last five years could be identified. The impact of this aspect of the proposal is estimated to be one bed by FY2019. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least $23,197.

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

FY14	FY15	FY16	FY17	FY18	FY19
0	1	1	1	1	1

Local adult correctional facilities. The proposal is also expected to increase the future need for local-responsible (jail) beds. The impact on local-responsible (jail) beds is estimated to be less than one bed by FY2019 (state costs: $658; local costs: $956).

Adult community corrections programs. 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. Data are not available to estimate the net impact on local or state community corrections resources that may result from the proposal.

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. The Department of Juvenile Justice (DJJ) reports that the proposal may have an impact on juvenile correctional center bed space needs. However, the actual impact cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that, while the proposal may have an impact on juvenile detention bed space needs, the actual impact cannot be determined.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least $23,197 for periods of imprisonment in state adult correctional facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation 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 2012.
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 2012.

3. Cost per prison bed was assumed to be $29,081 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 FY2011 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was $28.21 per day or $10,304 per year. The local cost was calculated by using the daily expenditure cost of $74.07 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 $40.96 per day or $14,961 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, 2013, 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, 2011. For person crimes, this rate was 8.8%.

Limitations

1. The Circuit Court Case Management System does not include cases from Fairfax, Alexandria, or Virginia Beach.
2. The Juvenile and Domestic Relations Court (JDR) data used for the current analysis only include adults convicted in JDR.

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