



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 335
Amendment in the Nature of a Substitute
(Patron Prior to Substitute – Bell, R.B.)

LD#: 14104969

Date: 2/10/2014

Topic: Protective orders

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

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

Summary of Proposed Legislation:

The proposal amends § 16.1-279.1 of the *Code of Virginia* to expand the conditions to which a respondent may be subjected when a magistrate or judge issues a protective order in cases of family abuse. Under the proposal, the court could enjoin the respondent from terminating any insurance, registration, or taxes on the vehicle and direct the respondent to maintain the insurance, registration, and taxes, as appropriate. The proposal would also allow the court to require the respondent to maintain the utilities, mortgage payments, rent, insurance, and taxes on the residence, as may be appropriate, and maintain utilities and rent for alternative housing for the petitioner.

Under § 16.1-279.1, a violation of a protective order issued under this section constitutes contempt of court, except as otherwise provided in § 16.1-253.2. Section 16.1-253.2 specifies criminal penalties for violations of protective orders issued pursuant to §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.14, 16.1-279.1, and subsection B of § 20-103. Specifically, § 16.1-253.2 establishes a Class 1 misdemeanor for cases in which the respondent violates a prohibition relating to going or remaining upon property, further acts of family abuse, committing a criminal offense, or contact between the respondent and certain individuals. If an individual is convicted of a second offense of violating a protective order within five years of the prior conviction when either offense was based on an act or threat of violence, a mandatory minimum term of confinement of 60 days applies. Any person convicted of a third or subsequent offense of violating a protective order in 20 years (with at least one involving an act or threat of violence), assaulting a protected person causing serious physical injury, and entering the home of a protected person is guilty of a Class 6 felony. An individual convicted of a felony offense for a third or subsequent violation of a protective order is also subject to a six-month mandatory minimum term of incarceration under § 16.1-253.2. Sections 18.2-308.1:4 and 18.2-119 prohibit the purchase or transportation of a firearm by individuals subject to protective orders as well as trespassing in violation of a protective order, respectively.

Section 16.1-253.2 has been modified several times in recent years. In 2007, the General Assembly established a 60-day mandatory minimum for certain individuals convicted of a second offense for

violating a protective order and increased the penalty to a Class 6 felony for certain individuals convicted of a third or subsequent violation within 20 years. The 2011 General Assembly modified several sections of the *Code* relating to protective orders. In addition to expanding the circumstances under which certain protective orders may be issued, the 2011 General Assembly modified § 16.1-279.1 to allow the court to prohibit any criminal offense that results in injury to person or property. In 2012, the General Assembly modified language in § 16.1-253.2 to clarify that only violations relating to trespass, family abuse, criminal offenses, or prohibited contact are punishable as Class 1 misdemeanors. The 2013 General Assembly amended § 16.1-253.2 to require that mandatory minimum terms of confinement prescribed for violations of this section must be served consecutively to any other sentence.

Analysis:

The Local Inmate Data System (LIDS) captures information on persons held in Virginia's local and regional jails. According to fiscal year (FY) 2011 and FY2012 LIDS data, there were 1,821 offenders held pre- or post-trial in jail who were convicted of a Class 1 misdemeanor under § 16.1-253.2 for a first violation of a protective order. For these offenders, the violation of the protective order was the primary (or most serious) offense. The majority of these offenders (97.7%) received a local-responsible (jail) term, for which the median sentence was approximately one month.

During the same time period, 82 offenders were held for a Class 1 misdemeanor conviction for a second violation of a protective order involving violence within five years (as the primary offense) under § 16.1-253.2. Two of these offenders did not receive an active term of incarceration to serve after sentencing. The remaining 80 offenders received a local-responsible (jail) term, with a median sentence of two months.

Also from the same two years of data, 31 offenders who were held pre- or post-trial in jail were convicted of a felony under § 16.1-253.2 for a third or subsequent violation of a protective order within 20 years. The felony protective order violation was the primary offense in 29 of the cases. Nearly half (48.3%) of these offenders received a local-responsible (jail) term, with a median sentence of 7.5 months. Another 41.4% received a state-responsible (prison) term, with a median sentence of two years. The remaining offenders (10.3%) did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. If the penalties proscribed in § 16.1-253.2 only apply for protective order violations relating to trespass, family abuse, criminal offenses, or prohibited contact, expanding the list of conditions that a respondent must abide by to include prohibitions that do not relate to these four violations will not increase the instances in which individuals may be convicted of a felony offense. Therefore, the proposal is not expected to increase the future state-responsible (prison) bed space needs of the Commonwealth.

Local adult correctional facilities. Under § 16.1-279.1, a violation of a protective order that is not covered by § 16.1-253.2 constitutes contempt of court. Since offenders may be jailed following a conviction for contempt, expanding the list of conditions that a respondent must abide by could affect the local-responsible (jail) bed space needs of the Commonwealth. However, the magnitude of the impact cannot be determined.

Adult community corrections programs. The net impact of the proposal on community corrections resources cannot be determined.

Virginia's sentencing guidelines. Currently, felony violations of protective orders under § 16.1-253.2 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 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 is \$0 for periods of imprisonment in state adult correctional facilities and \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

protord06_4969