



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 972

Amendment in the Nature of a Substitute (Patron Prior to Substitute – Cline)

LD#: 14105081

Date: 2/17/2014

Topic: Protective orders

Fiscal Impact Summary:

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

- **Juvenile Correctional Centers:**
Cannot be determined
- **Juvenile Detention Facilities:**
Cannot be determined

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 806 of the 2013 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 §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.8, 19.2-152.9, and 19.2-152.10 of the *Code of Virginia*, relating to protective orders. The proposal expands the list of conditions to which a respondent may be subjected when a magistrate or judge issues a protective order, including preliminary and emergency protective orders, as listed in the above statutes, to include the condition that the court grant the petitioner the possession of any companion animal jointly owned, possessed, or cared for by the petitioner and the respondent, or by a child residing in the petitioner's household and the respondent.

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.

Section 18.2-60.4 specifies penalties for any violation of a protective order issued pursuant to

§§ 19.2-152.8, 18.2-152.9, and 19.2-152.10. In 2011, the General Assembly modified § 18.2-60.4 to make the punishment for violations of this section mirror the penalties prescribed in § 16.1-253.2. 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 and 18.2-60.4 to require that mandatory minimum terms of confinement prescribed for violations of these sections 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 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.

The penalty enhancements under § 18.2-60.4 became effective on July 1, 2011. According to FY2012 LIDS data, 78 offenders who were held pre- or post-trial in jail were convicted of a misdemeanor under § 18.2-60.4 for violating a protective order. The majority (73.1%) of these offenders were sentenced to a jail term, with a median sentence of one month. The remaining 26.9% did not receive an active term of incarceration to serve after sentencing. LIDS data for FY2012 also indicate that two offenders were held in jail for a felony conviction under § 18.2-60.4 for violating a protective order. The protective order violation was not the primary, or most serious, offense in either of the cases. These offenders received state-responsible (prison) terms of 1.3 years and 10 years, respectively.

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 under § 16.1-253.2. However, by adding a condition to the list that a respondent must abide by when subject to a protective order issued pursuant to §§ 19.2-152.8, 18.2-152.9, and 19.2-152.10, the proposal may increase the number of convictions under § 18.2-60.4. Specifically, under the proposal, if the respondent

does not abide by a protective order by refusing to give the animal to the petitioner, he or she may be found in violation of the protective order under § 18.2-60.4, which may increase the future state-responsible (prison) bed space needs. Existing databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal. The magnitude of the impact on prison beds cannot be quantified.

Local adult correctional facilities. Similarly, the proposal may also increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be determined.

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. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. Currently, felony violations of protective orders 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 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 cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 806 of the 2013 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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