



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1087 (Patron – Gilbert)

LD#: 16104094

Date: 1/15/2016

Topic: Violations of protective orders

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$242,447 (8 beds)
- **Local Adult Correctional Facilities:**
At least -\$13,688 (-1 bed)
- **Adult Community Corrections Programs:**
Cannot be determined

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

* Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposal amends §§ 16.1-253.2 and 18.2-60.4 of the *Code of Virginia* to increase penalties related to violations of protective orders. Currently, a violation of a protective order is a Class 1 misdemeanor, punishable by up to 12 months in jail; however, the punishment for a second violation within five years (with at least one involving an act or threat of violence) includes a mandatory minimum term of confinement of 60 days. In addition, any person who violates a protective order three or more times in 20 years (with at least one involving an act or threat of violence) is guilty of a Class 6 felony and subject to a mandatory minimum term of confinement of six months. If an offender commits an assault and battery resulting in serious bodily injury to any person protected by the protective order, he or she is guilty of a Class 6 felony. Any person who violates a protective order by furtively entering the home of a protected person is also guilty of a Class 6 felony.

Under the proposal, any person who violates any provision of a protective order while armed with a firearm or other deadly weapon would be guilty of a Class 6 felony.

Analysis:

During fiscal year (FY) 2014 and FY2015, a total of 3,226 offenders were convicted of a misdemeanor violation of a protective order (as the primary, or most serious, offense) in General District Court, Juvenile and Domestic Relations Court, or Circuit Court. Of the total, 11 offenders had an additional offense conviction indicating possession of a firearm at the time of the protective order violation. Three of the 11 offenders (27.3%) did not receive an active term of incarceration to serve after sentencing; the remaining eight offenders (72.7%) received a local-responsible (jail) term, with a median sentence of approximately 3.4 months.

According to the Circuit Court Case Management System (CMS) for FY2014 and FY2015, 45 offenders were convicted of a Class 6 felony under §§ 16.1-253.2 or 18.2-60.4 for violating a protective order (as the primary offense). Of these, one offender (2.2%) did not receive an active term of incarceration to serve after sentencing. Another 60.0% received a local-responsible (jail) term, with a median sentence of six months. The remaining 37.8% received a state-responsible (prison) term, for which the median sentence was three years.

Impact of Proposed Legislation:

State adult correctional facilities. By establishing a new Class 6 felony for violating a protective order while armed with a deadly weapon, the proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. The impact on state-responsible (prison) beds is estimated to be at least 8 beds statewide by FY2022. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$242,447. This is a minimum estimate as data do not contain sufficient detail to identify all cases where an offender violated a protective order while armed with a deadly weapon.

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

FY17	FY18	FY19	FY20	FY21	FY22
2	5	6	7	8	8

Local adult correctional facilities. The proposal is expected to decrease the future need for local-responsible (jail) beds, since offenders who received a jail term in the past may receive a prison sentence under the proposal. The impact on local-responsible (jail) beds is estimated to be a decrease of at least one bed by FY2022 (state savings: at least \$13,688; local savings: at least \$20,117).

Estimated Six-Year Impact in Local-Responsible (Jail) Beds

FY17	FY18	FY19	FY20	FY21	FY22
0	-1	-1	-1	-1	-1

Adult community corrections programs. Because the proposal would result in additional felony convictions and subsequent supervision requirements for some offenders, the proposal will increase the need for state community corrections resources. The precise impact on community corrections resources, however, cannot be determined.

Virginia's sentencing guidelines. The new Class 6 felony would not be covered by the sentencing guidelines; however, convictions for this crime 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 at least \$242,447 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 2015.
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 2015.
3. Cost per prison bed was assumed to be \$31,406 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 FY2014 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$30.57 per day or \$11,166 per year. The local cost was calculated by using the daily expenditure cost of \$78.53 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 \$44.93 per day or \$16,411 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. Eligible offenders were identified as those whose primary offense was a misdemeanor conviction for violating a protective order in General District Court, Juvenile and Domestic Relations Court, or Circuit Court, with an additional offense indicating possession of a firearm at the time of the protective order violation.
2. It was assumed that prosecutors would charge all eligible offenders under the enhanced felony provisions.

Assumptions relating to sentencing and length-of-stay

1. The impact of the proposed legislation, which would be effective on July 1, 2016, is phased in to account for case processing time.
2. To gauge the impact on sentencing, it was assumed that, for offenders subject to the new Class 6 felony provision, the distribution of sentences for the affected cases will be similar to the distribution of sentences for cases subject to the existing Class 6 felony penalty for violating a protective order.
3. 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, 2014. For person crimes, this rate was 8.8%.

Limitations

1. The Circuit Court Case Management System does not include cases from Fairfax or Alexandria. Although Virginia Beach left the system in FY2009, it rejoined the system in October 2014.
2. The Juvenile and Domestic Relations District Court (JDR) data used for the current analysis only include adults convicted in JDR.

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