Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 752

(Patron – Bell, Robert B.)

LD#: 16102756 **Date:** 1/3/2016

Topic: Stalking

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**

** Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 665 of the 2015 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 § 18.2-60.3, relating to stalking. 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. The proposal adds language stating that if the offender attempts to contact or follow another after being given actual notice that the intended victim does not want to be contacted or followed, such actions shall be prima facie evidence that the offender intended to place that person in reasonable fear of death, injury, or sexual assault.

In addition to the Class 1 misdemeanor, stalking is currently 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. A third conviction under the stalking provision within five years is also a Class 6 felony.

Analysis:

During fiscal year (FY) 2010 through FY2015, a total of 906 offenders were convicted of a misdemeanor stalking offense (as the primary, or most serious, offense) in general district court, juvenile and domestic relations court, or circuit court. Of these, 47.7% did not receive an active term of incarceration to serve after sentencing. The remaining 52.3% received a local-responsible (jail) term, with a median sentence of three months.

According to the Circuit Court Case Management System (CMS) for FY2010 through FY2015, no offenders were convicted under § 18.2-60.3 for stalking following a prior assault/protective order

conviction involving the same victim within the past five years. However, five offenders were convicted of a Class 6 felony for a third stalking offense within five years. Of these, one offender (20%) did not receive an active term of incarceration to serve after sentencing. Two offenders (40%) received local-responsible (jail) terms, with a median sentence of approximately 3.3 months. The remaining two offenders (40%) received state-responsible (prison) terms, for which the median sentence was 2.5 years.

Impact of Proposed Legislation:

State adult correctional facilities. By including language to describe actions constituting prima facie evidence of stalking behavior, the proposal potentially expands the applicability of existing felony offenses. In this way, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, the number of additional felony convictions that may result from enactment of the proposal cannot be estimated. Therefore, the magnitude of the impact on prison bed space needs cannot be determined.

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 convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. 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. The sentencing guidelines do not cover felony violations of § 18.2-60.3. However, a conviction for such an offense may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the sentencing guidelines would be necessary under the proposal.

Juvenile correctional centers. The Department of Juvenile Justice (DJJ) reports that the impact of this proposal on bed space needs of juvenile correctional centers cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on detention center bed space 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 665 of the 2015 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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