



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1335 **(Patrons – Bourne et al.)**

LD#: 18104108

Date: 1/8/2018

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 Direct Care:**
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 836 of the 2017 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal adds § 18.2-60.6 (relating to protective orders) to the *Code of Virginia* and amends §§ 16.1-253.2, 17.1-513, 18.2-60.4, 18.2-60.5, 18.2-119, and 18.2-308.1:4. The current provisions specify the criminal penalties for violations of protective orders. Under §§ 18.2-60.4 and 16.1-253.2, violations of protective orders are punishable as a Class 1 misdemeanor. 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) 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. Furthermore, it is a Class 6 felony if the respondent 1) violates the protective order while knowingly armed with a firearm or other deadly weapon, 2) commits an assault and battery upon any party protected by the protective order resulting in bodily injury to the party or stalks any party protected by the protective order, or 3) furtively enters the home of any protected party while the party is present, or by entering and remaining in the home of the protected party until the party arrives. According to §§ 18.2-60.4 and 16.1-253.2, upon conviction of the violation of a protective order, the court shall enter a protective order for a specified period not exceeding two years from the date of conviction.

Under the proposed § 18.2-60.6, the court, upon finding a person guilty of one of the specified offenses, may enter a protective order, for any period of time, including up to the lifetime of the defendant, that the court deems necessary to protect the health and safety of the victim. The proposal defines an offense authorizing the issuance of a protective order under this provision as any felony violation of § 16.1-253.2, Article 1 (relating to homicide), Article 3 (relating to kidnapping), Article 4 (relating to assault and bodily wounding), Article 6 (relating to extortion and other threats), and Article 7 (relating to criminal sexual assault). A violation of the protective order issued under the proposed § 18.2-60.6 would constitute contempt of court or may result in a conviction under § 18.2-60.4.

Furthermore, the proposal amends § 18.2-60.5 (relating to the unauthorized use of an electronic tracking device), § 18.2-119 (relating to trespassing when forbidden to do so), and § 18.2-308.1:4 (relating to purchasing or transporting a firearm while subject to a protective order) to include the proposed § 18.2-60.6.

Analysis:

Available data indicate the number of offenders who have been found guilty of an offense authorizing the issuance of a protective order under the proposed § 18.2-60.6. Sentencing Guidelines data for fiscal year (FY) 2016 and FY 2017 indicate that 4,362 offenders were convicted of a felony under Article 1, Article 3, Article 4, Article 6, and Article 7 of Chapter 4 of Title 18.2. Additionally, according to the Case Management Systems (CMS) for General District Court and Circuit Court, 88 offenders were convicted of a felony violation under §§ 16.2-253.2 and 18.2-60.4. In sum, data indicate that 4,450 offenders have been found guilty of an offense authorizing the issuance of a protective order under the proposed § 18.2-60.6 and could be affected if the proposal were enacted.

While data is not sufficient to identify the number of individuals who would be made subject to a protective order under the proposed § 18.2-60.6, violations of the proposed § 18.2-60.6 could be punished under § 18.2-60.4 for violating a protective order. As such, affected offenders may be sentenced similarly to those currently convicted under § 18.2-60.4. A review of fiscal year (FY) 2016 through FY2017 Circuit Court Case Management System (CMS) data indicates that 42 offenders were convicted under § 18.2-60.4. It was the primary, or most serious, offense in 20 of the cases. The majority (70.0%) of offenders received a local-responsible (jail) term for which the median sentence was 3.5 months. Another 15% of the offenders received a state-responsible (prison) term with a median sentence of 1.5 years. The remaining 15% did not receive an active term of incarceration to serve after sentencing.

Furthermore, General District Court Case Management System data for the same time period indicate that 595 offenders were convicted of a misdemeanor under § 18.2-60.4. It was the primary offense in all of the cases. The majority (76.6%) of offenders received a local-responsible (jail) term with a median sentence of one month. The remaining 23.4% did not receive an active term of incarceration to serve after sentencing.

Data from the General District Court Case Management System for the same time period indicate that there were two convictions under § 18.2-60.5 for the unauthorized use of an electronic tracking device. It was the primary offense in one of the cases. The offender did not receive an active term of incarceration to serve after sentencing.

The same data show that there were 8,364 convictions under § 18.2-119 for trespassing after being forbidden to do so. It was the primary offense in 8,362 cases. Of these, 67.6% did not receive an active term of incarceration to serve after sentencing. The other 32.4% received a local-responsible (jail) term for which the median sentence was approximately 30 days. Furthermore, the data indicate that there were 77 misdemeanor convictions under § 18.2-308.1:4 for purchasing or transporting a firearm while subject to a protective order. Over two-thirds (68.8%) of these offenders did not receive an active term of

incarceration to serve after sentencing. The remaining 31.2% were sentenced to local-responsible (jail) term with a median sentence of approximately one month.

Impact of Proposed Legislation:

State adult correctional facilities. Because it expands the applicability of existing felony offenses, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal. As a result, 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 both misdemeanor and felony 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 cannot be quantified.

Virginia's sentencing guidelines. Currently, felony violations of protective orders under §18.2-60.4 are not covered by the guidelines when these crimes are the primary, or 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 direct care. According to the Department of Juvenile Justice (DJJ), the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) 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 836 of the 2017 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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