



## Fiscal Impact Statement for Proposed Legislation

### *Virginia Criminal Sentencing Commission*

## House Bill No. 159

(Patron – Kory)

LD#: 20104134

Date: 12/19/2019

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 854 of the 2019 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 §§ 16.1-253.1, 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* pertaining to protective orders. The proposal adds prohibition of “using any electronic device to remotely control any appliance, utility, or device located on or within the petitioner’s residence or the curtilage thereof” as an impossible condition for preliminary protective orders, emergency protective orders, and permanent protective orders. Currently, under §§ 18.2-60.4, 16.1-253.2<sup>1</sup>, and 16.1-253.4, 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. According to §§ 18.2-60.4 and 16.1-

<sup>1</sup> Protective orders issued pursuant to §§ 16.1-253.1, 16.1-253.4, and 16.1-279.1 are punishable under § 16.1-253.2 if the protective order provision(s) violated prohibit(s) the subject from: “(i) going or remaining upon land, buildings, or premises; (ii) further acts of family abuse; or (iii) committing a criminal offense, or which prohibit(s) contacts by the respondent with the allegedly abused person or family or household members of the allegedly abused person as the court deems appropriate,” or for any of the other conditions listed in this paragraph. Otherwise, violations under §§ 16.1-253.1, 16.1-253.4, and 16.1-279.1 are punishable as contempt of court. This analysis assumes that violations of the proposed protective order condition are within judicial discretion to be punished under § 16.1-253.2.

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.

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**Analysis:**

According to e-Magistrate System, General District Court Case Management System (CMS), and Juvenile and Domestic Relations District Court CMS data, 123,655 protective orders were issued between January 1, 2018 and June 30, 2019, under §§ 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. Data do not exist to estimate the rate at which a judge or magistrate might apply the proposed condition to protective orders.

While data is not sufficient to identify the number of individuals who would violate the proposed protective order condition, such violations would be punished under §§ 18.2-60.4, 16.1-253.2, or 16.1-253.4, depending on the type of protective order and circumstances of the violation. As such, affected offenders may be sentenced similarly to those currently convicted under the aforementioned *Code* sections. Relevant misdemeanor convictions for this proposal include general violation of a protective order, second violation of a protective order within five years, and violation of an emergency protective order. Relevant felony convictions include third violation of a protective order within twenty years and stalking a person with a protective order.

A review of Fiscal Year (FY)2018 through FY2019 Circuit Court CMS data indicates that 303 offenders were convicted for a relevant felony under §§ 18.2-60.4 or 16.1-253.2. It was the primary, or most serious, offense in 53 of the cases. The majority (64.2%) of offenders received a local-responsible (jail) term for which the median sentence was six months. Four offenders (7.5%) did not receive an active term of incarceration to serve after sentencing. The remaining 23.8% received a state-responsible (prison) term with a median sentence of 1 year.

The majority of protective order violation misdemeanor convictions occur in Juvenile & Domestic Relations Court (JDR). JDR CMS data for the same time period indicate that 2,866 offenders were convicted of a relevant protective order violation misdemeanor under §§ 18.2-60.4, 16.1-253.2, or 16.1-253.4. It was the primary offense in all of the cases. The majority (80.6%) of offenders received a local-responsible (jail) term with a median sentence of 15 days. The remaining 19.4% did not receive an active term of incarceration to serve after sentencing.

Furthermore, General District Court CMS data for FY2018 through FY2019 indicate that 632 offenders were convicted of a relevant protective order violation misdemeanor under §§ 18.2-60.4, 16.1-253.2, or 16.1-253.4. It was the primary offense in all of the cases. The majority (77.4%) of offenders received a local-responsible (jail) term with a median sentence of 20 days. The remaining 22.6% did not receive an active term of incarceration to serve after sentencing.

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**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 and 16.1-253.2 are not covered by the guidelines when these crimes are the primary, or most serious, offense. However, such a conviction 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, 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.

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**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 854 of the 2019 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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