



## **Fiscal Impact Statement for Proposed Legislation**

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### ***Virginia Criminal Sentencing Commission***

### **House Bill No. 372** ***(Patron – Bell)***

**LD#:** 20102507

**Date:** 12/13/2019

**Topic:** Protective order violations involving assault and battery

#### **Fiscal Impact Summary:**

- **State Adult Correctional Facilities:**  
At least \$2,566,408 (71 beds)
- **Local Adult Correctional Facilities:**  
At least \$137,436 (11 beds)
- **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

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#### **Summary of Proposed Legislation:**

The proposal amends § 16.1-253.2 and § 18.2-60.4 relating to protective orders. Currently, under § 16.1-253.2 (C) and 18.2-60.4 (C), it is a Class 6 felony for the respondent to a protective order to commit an assault and battery, which causes bodily injury, upon any protected party. The proposal removes the bodily injury requirement for this Class 6 felony to apply.

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#### **Analysis:**

According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2018 and FY2019, 31 offenders were convicted of a Class 6 felony under § 16.1-253.2 (C) or § 18.2-60.4 (C) for committing an assault and battery upon a protected party that resulted in bodily injury. This offense was the primary, or most serious, offense in 12 cases. Two-thirds (66.7%) of these offenders received a local-responsible (jail) term with a median sentence of 8.5 months. The remaining one-third (33.3%) were given a state-responsible (prison) term for which the median sentence was 2.3 years.

During fiscal year (FY) 2018 and FY2019, a total of 3,603 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, 169 offenders were also sentenced for a misdemeanor assault and battery offense<sup>1</sup> that occurred on the same date as the protective order violation. These individuals violated a protective order and committed assault and battery but were not convicted of the existing felony, which requires bodily injury to the victim. However, these offenders may qualify for felony prosecution under the proposed expansion of § 16.1-256.2(C) and § 18.2-60.4(C),

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<sup>1</sup> These offenders were sentenced for a misdemeanor assault and battery against a family or household member (as defined in § 18.2-57.2).

as injury would no longer be required for the felony to apply. The majority (88.8%) of these offenders received a local-responsible (jail) term with a median sentence of two months. The remaining 11.2% did not receive an active term of incarceration to serve after sentencing.

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### Impact of Proposed Legislation:

**State adult correctional facilities.** The proposal expands the applicability of an existing Class 6 felony to include violations of protective orders in which the subject of the order commits assault and battery upon the protected party, regardless of whether injury resulted. The proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. The impact is estimated to be at least 71 beds statewide by FY2026. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$2,566,408. This is a minimum estimate as data do not contain sufficient detail to identify all cases where an offender committed an assault and battery without causing bodily injury.

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

FY21	FY22	FY23	FY24	FY25	FY26
28	57	69	71	71	71

**Local adult correctional facilities.** The proposal is also expected to increase the future need for local-responsible (jail) beds. The impact is estimated to be at least 11 beds by FY2026 (state costs: at least \$137,436; local costs: at least \$206,905).

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

FY21	FY22	FY23	FY24	FY25	FY26
9	11	11	11	11	11

**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.** Currently, felony violations of protective orders under §§ 16.1-253.2 and 18.2-60.4 are not covered by the sentencing guidelines. 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, 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 is at least \$2,566,408 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 2019.
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 2019.
3. Cost per prison bed was assumed to be \$36,315 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 FY2018 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$34.07 per day or \$12,444 per year. The local cost was calculated by using the daily expenditure cost of \$88.14 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 \$51.29 per day or \$18,734 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 who had an additional offense of misdemeanor assault and battery of a family or household members (§ 18.2-57.2) that was committed on the same date as the protective order violation.
2. It was assumed that prosecutors would charge all eligible offenders under the enhanced felony provision.

**Assumptions relating to sentencing and length-of-stay**

1. The impact of the proposed legislation, which would be effective on July 1, 2020, is phased in to account for case processing time.
2. To gauge the impact on sentencing, it was assumed that 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 for committing an assault and battery upon a protected party that resulted in bodily injury.
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, 2018. For person crimes, this rate was 8.25%.

**Limitations**

1. The Circuit Court Case Management System does not include cases from Fairfax or Alexandria.
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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