

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: SB144 ES1

House of Origin	<input type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input checked="" type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: Stuart

3. Committee: Committee on the Judiciary

4. Title: Protective orders; issuance upon convictions for certain felonies; penalty.

5. Summary: This bill authorizes a court to issue a protective order upon convicting a defendant for a felony offense of (i) violating a protective order, (ii) homicide, (iii) kidnapping, (iv) assault and bodily wounding, (v) extortion, or (vi) criminal sexual assault.

The bill provides that the duration of such protective order can be for any period of time, including up to the lifetime of the defendant, that the court deems necessary to protect the victim's health and safety or the victim's property. The bill provides that a violation of a protective order issued upon conviction of one of the enumerated offenses is punishable as contempt of court or in the same manner as criminal violations of other protective orders are punished.

Under current law, many violations of protective orders are punishable as a Class 1 misdemeanor; a second offense of violating a protective order within five years carries a minimum term of 60 days in jail. A third or subsequent offense of violating a protective order within 20 years (with at least one involving an act or threat of violence) is punishable as a Class 6 felony that carries a mandatory minimum term of six-months in jail. Class 6 felony punishments also apply in cases where the subject: violates the protective order while knowingly armed with a firearm or other deadly weapon; commits an assault and battery upon any protected party resulting in bodily injury, or stalks any protected party; or covertly enters the home of any protected party.

The bill also adds the newly proposed section to penalties assessed for: §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).

The engrossed bill provides that the duration of the protective order can be for any reasonable period of time, including up to the lifetime of the defendant. The substitute bill also allows any party at any time to file a written motion with the court requesting a hearing to dissolve or modify the order. In such cases, the party filing the motion to dissolve or modify an order must provide notice of the motion to the other party, and the court must conduct a hearing on any motion filed.

6. Budget Amendment Necessary: Yes, Item 402.

8. Fiscal Implications: By expanding new misdemeanor and felony offenses, this legislation may increase the number of people sentenced to jail or prison. Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail. For someone convicted of a Class 6 felony, a judge has the option of sentencing him to up to 12 months in jail, or one to five years in prison. For offenses that carry mandatory sentences, the judge must sentence an offender to at least the prescribed minimum.

There is not enough information available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail and \$12.00 a day for each state-responsible prisoner. It also funds a considerable portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2019), the estimated total state support for local jails averaged \$34.07 per inmate, per day in FY 2018.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 854, 2019 Acts of Assembly, requires that a minimum impact of \$50,000 be assigned to the bill.

9. Specific Agency or Political Subdivisions Affected: Department of Corrections, local and regional jails, courts

10. Technical Amendment Necessary: None

11. Other Comments: The engrossed bill includes an enactment clause stating that this act will not become effective unless an appropriation effectuating the purposes of this act is included in a general appropriation act passed in 2020 by the General Assembly that becomes law.