Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 574

(Patron – Lindsey)

LD#: 20101861 **Date:** 12/27/2019

Topic: Protective orders on behalf of incapacitated persons

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, 16.1-279.1, 19.2-152.9, and 19.2-152.10 of the *Code of Virginia* pertaining to protective orders. The proposal enables an employee of the local department of social services to file a petition for a protective order on behalf of an "incapacitated person" defined as "any adult who is impaired by reason of mental illness, intellectual disability, physical illness or disability, advanced age or other causes to the extent that the adult lacks sufficient understanding or capacity to make, communicate or carry out responsible decisions concerning his or her well-being" (as defined in § 63.2-1603).

Currently, under §§ 18.2-60.4 and 16.1-253.2[1], 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

[1] Protective orders issued pursuant to §§ 16.1-253.1 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 and 16.1-279.1 are punishable as contempt of court.

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 16.1-253.2, 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.

Analysis:

According to e-Magistrate System, General District Court Case Management System (CMS), and Juvenile and Domestic Relations District Court CMS data, 36,603 protective orders were issued between January 1, 2018 and June 30, 2019, under §§ 16.1-253.1, 16.1-279.1, 19.2-152.9, and 19.2-152.10[2]. Data do not exist to estimate the number of protective orders which would be issued on behalf of incapacitated persons, but the proposal may lead to more orders issued by giving local social services departments the ability to file petitions for adult protective orders.

While data is not sufficient to identify the number of individuals who would violate protective orders issued on behalf of incapacitated persons, such violations would be punished under §§ 18.2-60.4 or 16.1-253.2, 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. Misdemeanor convictions for this proposal include general violation of a protective order and second violation of a protective order within five years. Felony convictions include: third violation of a protective order within 20 years (at least one involving violence), violating a protective order while armed with a deadly weapon, assault with injury to a protected person, entering the home of a protected person, and stalking a protected person.

A review of Fiscal Year (FY)2018 through FY2019 Circuit Court CMS data indicates that 128 offenders were convicted for a felony under §§ 18.2-60.4 or 16.1-253.2. It was the primary, or most serious, offense in 81 of the cases. The majority (63.0%) of offenders received a local-responsible (jail) term for which the median sentence was six months. Seven offenders (8.6%) did not receive an active term of incarceration to serve after sentencing. The remaining 28.4% received a state-responsible (prison) term with a median sentence of 1.6 years.

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 2,860 offenders were convicted of a relevant protective order violation Class 1 misdemeanor under §§ 18.2-60.4 or 16.1-253.2. The majority (80.8%) of offenders received a local-responsible (jail) term with a median sentence of 15 days. The remaining 19.2% 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 or 16.1-253.2. 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.

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

[2] Excludes 3,546 protective orders for which the statute of issuance was uncertain.

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, 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.

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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