

Department of Planning and Budget

2021 Fiscal Impact Statement

1. Bill Number: SB1415

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Stanley

3. Committee: Judiciary

4. Title: Violations of protective orders; preliminary child protective order.

5. Summary: The proposed bill changes the punishment and sentencing requirements for a violation of a preliminary child protective order so that the maximum penalty is a Class 1 misdemeanor and the court is no longer required to enter a permanent family abuse protective order (i.e., a protective order with a maximum duration of two years) upon a conviction of a violation of a preliminary child protective order. The bill provides that a violation of a preliminary child protective order is punishable as contempt of court; however, if the violation involves an act or acts of commission or omission that endanger the child's life, health, or normal development or result in bodily injury to the child, it is punishable as a Class 1 misdemeanor. Under current law, violations of preliminary child protective orders constitute contempt of court and are also subject to the same penalties as violations of preliminary, emergency, and permanent family abuse protective orders, including enhanced penalties for certain violations.

This bill is a recommendation of the Virginia Criminal Justice Conference.

6. Budget Amendment Necessary: No

7. Fiscal Impact Estimates: Preliminary. See Item 8 below.

8. Fiscal Implications: Currently under §16.1-253.2 (Violation of provisions of protective orders), in addition to any other penalty, any person who violates any provision of a protective order issued pursuant to §16.253 (preliminary protective order) and other statutes, when such violation involves a provision of the protective order that prohibits such person from (i) going or remaining upon land, buildings, or premises; (ii) further acts of family abuse; or (iii) committing a criminal offense, or which prohibits contacts by the respondent with the allegedly abused person or family or household members of the allegedly abused person as the court deems appropriate, is guilty of a Class 1 misdemeanor. However, the penalty for any person convicted of a second offense of violating a protective order, when the offense is committed within five years of the prior conviction and when either the instant or prior offense was based on an act or threat of violence, includes a mandatory minimum term of confinement of 60 days. Additionally, any person convicted of a third or subsequent offense of violating a protective order, when the offense is committed within 20 years of the first conviction and when either the instant or one of the prior offenses was based on an act or threat of violence is guilty of a Class 6 felony and the punishment includes a mandatory minimum term of confinement of six months. The mandatory

minimum terms of confinement prescribed for violations of this section are to be served consecutively with any other sentence. The proposed legislation changes the punishment and sentencing requirements for a violation of a preliminary child protective order so that the maximum penalty is a Class 1 misdemeanor.

It also provides that in addition to any other penalty provided by law, any person who, while knowingly armed with a firearm or other deadly weapon, violates any provision of a protective order with which he has been served issued pursuant to §16.253 (preliminary protective order) is guilty of a Class 6 felony. This proposal changes the punishment and sentencing requirements for a violation of a preliminary child protective order so that the maximum penalty is a Class 1 misdemeanor.

According to the Supreme Court of Virginia's Juvenile & Domestic Relations Court Case Management Systems (CMS) data, provided by the Virginia Criminal Sentencing Commission (VCSC), at least five adult offenders were convicted of a misdemeanor (§16.1-253) for violating a preliminary protective order from FY 2015-FY 2020. All were sentenced to jail with a median sentence of two months. This reflects an average of zero to one offender per year that were convicted of a misdemeanor for violating a preliminary protective order.

In addition, CMS data also reported a total of 159 felony violations (§ 16.1-253.2) of protective orders during the same time period. Although there is no way to distinguish among the specific types of protective order violations (i.e., emergency, preliminary or final orders), of these felony violations, 6.9 percent were sentenced to probation, 68.6 percent were sentenced to jail with a median sentence of six months while 24.5 percent were sentenced to prison with a median sentence of two years.

By reducing the penalty to a Class 1 misdemeanor, the proposed legislation is expected to reduce the number of offenders who would have been sentenced to terms in state prisons. Under the proposed legislation, offenders sentenced to active terms of incarceration would instead serve the sentence in local jails. The potential savings associated with this bill depends on how many offenders would have been sentenced to a state-responsible term and where those offenders would ultimately serve their sentences. The cost of a bed in a DOC facility (prison) in FY2020 was \$38,688 as calculated by the Department of Planning and Budget. The Commonwealth pays localities \$12.00 a day for any state-responsible prisoner held in a local jail.

Potential savings would be offset by the costs incurred to house misdemeanants in jails. Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail and a fine of not more than \$2,500, either or both.

The Commonwealth currently pays the localities \$4.00 a day for each misdemeanant or otherwise local-responsible prisoner held in a jail. It also funds a large portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2020), the estimated total state support for local jails averaged \$34.59 per inmate, per day in FY 2019.

9. Specific Agency or Political Subdivisions Affected: Department of Corrections, Department of Juvenile Justice, Local and regional jails, Local law enforcement agencies, Courts, Commonwealth's Attorneys, and Public Defenders Offices.

10. Technical Amendment Necessary: No

11. Other Comments: Identical to HB2012