



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1897 Amendment in the Nature of a Substitute (Patron Prior to Substitute – Bell)

LD#: 23105894

Date: 02/02/2023

Topic: Extension of 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 2 of the Acts of Assembly of 2022, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

Summary of Proposed Legislation:

The proposal amends §§ 16.1-253.1 and § 16.1-279.1 (related to family abuse protective orders), as well as §§ 19.2-152.9 and 19.2-152.10 (related to health and safety protective orders). Under the proposal, if a petitioner files a written motion requesting a hearing to extend a permanent protective order, the court may extend the protective order until the extension hearing; the hearing does not have to occur prior to the expiration of the protective order for such an order to be extended. If the respondent fails to appear at the extension hearing because he was not personally served, the court may extend the protective order for an additional period not to exceed six months. Either the petitioner, with clear and convincing evidence, or the respondent, for good cause shown, may request a continuance of the extension hearing. The court may continue the hearing and extend the protective order until that date. The proposal also provides that, when an ex parte preliminary protective order has been issued, the court may continue the full hearing of the protective order upon the motion of the petitioner when the petitioner shows by clear and convincing evidence that a continuance is necessary to meet the ends of justice. Under current law, only the respondent, for good cause, may file a motion to continue the hearing.

Currently, under § 16.1-253.2¹, many violations of family abuse protective orders are punishable as Class 1 misdemeanors. Per § 18.2-60.4, violations of health and safety protective orders issued under §§ 19.2-

¹ 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 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.” 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.

152.8, 19.2-152.9, or 19.2-152.10 are also Class 1 misdemeanors. 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. Furthermore, it is a Class 6 felony if the respondent 1) violates the protective order while knowingly armed with a firearm or other deadly weapon, 2) commits an assault and battery upon any party protected by the protective order resulting in bodily injury to the party or stalks any party protected by the protective order, or 3) furtively enters the home of any protected party while the party is present, or by entering and remaining in the home of the protected party until the party arrives.

According to §§ 16.1-253.2 and 18.2-60.4, 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 the General District Court and Juvenile & Domestic Relations Court Case Management Systems (CMS), 5,364 protective orders were issued under § 16.1-279.1 and 3,827 protective order orders were issued under § 19.2-152.10 during calendar year 2021. Data do not exist to estimate the rate at which judges might extend protective orders, as proposed. By authorizing extensions of protective orders, however, the proposal would provide additional time during which the person subject to the protective order may violate the conditions of the order set by the court. While data are not sufficient to estimate the number of additional protective order violations that may result, such violations could be punished under § 16.1-253.2, depending on the circumstances of the violation, or § 19.2-60.4. As such, affected offenders may be sentenced similarly to those currently convicted under these *Code* sections (see table below).

Offenders Convicted of Protective Order Violations, FY2021-FY2022

Primary Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
Felony protective order violation – family abuse (§ 16.1-253.2) ¹	75	5.3%	60.0%	6 mos.	34.7%	2.0 yrs.
Felony protective order violation – health and safety (§ 18.2-60.4) ¹	28	7.1%	75.0%	6 mos.	17.9%	1.5 yrs.
JDR Court - Misdemeanor protective order violation (order issued under § 16.1-279.1) ²	7	28.6%	71.4%	3 dys.	NA	NA
JDR Court - Misdemeanor protective order violation (order issued under §§ 16.1-253.1, 16.1-253.4, or 16.1-279.1) ²	2,584	17.3%	82.7%	10 dys.	N/A	N/A
Gen District Court - Misdemeanor protective order violation (order issued under §§ 16.1-253.1, 16.1-253.4, or 16.1-279.1) ³	19	42.1%	57.9%	21 dys.	N/A	N/A
Gen District Court - Misdemeanor protective order violation (order issued under § 19.2-152.10) ³	0	N/A	N/A	N/A	N/A	N/A
Gen District Court - Misdemeanor protective order violation (order issued under §§ 19.2-152.8, 19.2-152.9, or 19.2-152.10) ³	677	20.7%	79.3%	15 dys.	N/A	N/A

Note: Analysis is based on cases in which the specified offense was the primary, or most serious, offense in the sentencing event.

Sources: ¹ Supreme Court of Virginia - Circuit Court Case Management System (CMS), FY2021-FY2022;

² Supreme Court of Virginia – Juvenile & Domestic Relations Case Management System (CMS), FY2021-FY2022;

³ Supreme Court of Virginia - General District Court Case Management System (CMS), FY2021-FY2022;

Impact of Proposed Legislation:

State adult correctional facilities. Because it potentially 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 §§ 16.1-253.2 and 19.2-60.4 are not covered by the Sentencing Guidelines when these crimes are the primary, or most serious, offense. Guidelines do not apply if the most serious offense at sentencing is a misdemeanor. Any such convictions may augment the Guidelines recommendation (as additional offenses) 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 2 of the Acts of Assembly of 2022, Special Session I, 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.