



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 475 (Patron – Murphy)

LD#: 22101278

Date: 01/07/2022

Topic: Protective orders related to human/sex trafficking and petitions by minors

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 552 of the Acts of Assembly of 2021, 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 §§ 16.1-228 and 19.2-152.7:1 by defining “family abuse” and “act of violence, force or threat” to include acts in the furtherance of human trafficking or commercial sex trafficking. As proposed, § 16.2-279.2 would allow a minor to petition on their own for a protective order without the consent of a parent, guardian, or next friend.

Currently, under § 16.1-253.2, violations of protective orders issued under §§ 16.2-253.1, 16.1-253.4, 16.1-278.14, 16.1-279.1, or 20-103(B) are punishable as Class 1 misdemeanors when the violation involves a provision of the protective order that prohibits the 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 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.” 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 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, 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. If the protective order violation under §§ 16.1-253.1, 16.1-253.4, or 16.1-279.1 does not meet any of the above conditions, it is punishable as contempt of court.

Analysis:

According to e-Magistrate System 56,294 emergency protective orders related to family abuse were issued between January 1, 2020, and June 30, 2021 under §16.1-253.4. According to the Case Management System (CMS) for General District Courts and Juvenile and Domestic Relations District Courts (JDR), 14,231 preliminary protective orders were issued during the same period under the provisions of § 19.2-152.9 or 19.2-152.10¹. Another 15,181 preliminary protective orders were issued under § 16.1-253.1, 7,587 under § 16.1-279.1 and 732 under § 19.2-152.10. Data do not exist to estimate the number of protective orders a judge or magistrate might issue based on elements related to human trafficking, commercial sex trafficking or the result of a minor seeking a protective order.

Affected offenders who commit protective order violations under the modified definitions of “family abuse” or “act of violence, force or threat” may be sentenced similarly to those currently convicted under § 16.1-253.2². Also, violation of protective orders issued based on petitions by minors, on their own, may also be sentenced similarly. A review of FY2020 through FY2021 Circuit Court CMS data indicates that 110 offenders were convicted for a felony under § 16.1-253.2. It was the primary, or most serious, offense in 76 of the cases. The majority (72.4%) of offenders received a local-responsible (jail) term for which the median sentence was six months. One offender (1.3%) did not receive an active term of incarceration to serve after sentencing. The remaining 26.3% received a state-responsible (prison) term with a median sentence of 1.3 years.

Furthermore, JDR CMS data for the same time period indicate that 2,541 adult offenders were convicted of a Class 1 misdemeanor under § 16.1-253.2. The majority (82.9%) received a local-responsible (jail) term with a median sentence of 10 days. The remaining 17.1% 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 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. By expanding both misdemeanor and felony offenses, 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 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

¹ Excludes 2,058 protective orders for which the statute of issuance was uncertain.

² Assuming that the protective order condition(s) violated meet(s) a condition for punishment under § 16.1-253.2, as laid out in the summary section of this analysis.

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 are not covered by the Guidelines when these crimes are the primary, or most serious, offense. However, such convictions 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 (DJJ), 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 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 552 of the Acts of Assembly of 2021, 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.

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