



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 174 (Patron – Peake)

LD#: 22102835

Date: 01/27/2022

Topic: 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 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 § 19.2-152.10 of the *Code of Virginia*, relating to permanent protective orders and contact between the petitioner and respondent. Specifically, the proposal provides that that when issuing a permanent protective order a court may impose certain conditions on the petitioner, including (i) prohibiting acts of violence, force, or threat or criminal offenses that may result in injury to person or property; (ii) prohibiting such contacts by the petitioner with the respondent or family or household members of the respondent as the court deems necessary for the health or safety of such persons; and (iii) any other relief necessary to prevent (a) acts of violence, force, or threat, (b) criminal offenses that may result in injury to person or property, or (c) communication or other contact of any kind by the petitioner.

Currently, under § 18.2-60.4, violation of a protective order issued under § 19.2-152.10 is 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 of a Class 6 felony. An individual convicted of a felony offense for a third or subsequent violation of a protective order is subject to a six-month mandatory minimum term of incarceration. Under § 18.2-60.4(B), it is a Class 6 felony for any person to violate the provision of a protective order while knowingly armed with a firearm or other deadly weapon. Under § 18.2-60.4 C), it is a Class 6 felony for a person who is the respondent of a protective order to 1) commit assault and battery resulting in injury to a protected party, 2) stalk a protected party, or 3) enter the home of a protected party while he or she is present (or wait in the home until the protected party arrives).

Analysis:

According to the Case Management System (CMS) for General District Courts and Juvenile and Domestic Relations Courts, 5,063 protective orders were issued between January 1, 2020, and June 30, 2021 under the provisions of § 19.2-152.10¹. Data are not sufficient to estimate the number of petitioners who would violate protective orders issued under § 19.2-152.10. Such violations would be punishable under § 18.2-60.4. As such, affected offenders may be sentenced similarly to those currently sentenced under this provision.

A review of fiscal year (FY) 2020 and FY2021 Circuit Court CMS data indicates that 29 offenders were sentenced for a felony protective order violation under § 18.2-60.4. It was the primary, or most serious, offense in 22 of the cases. Most offenders (68.2%) received a local-responsible (jail) term for which the median sentence was six months. Another 18.2% received a state-responsible (prison) term with a median sentence of 1.4 years. The remaining 13.6% did not receive an active term of incarceration to serve after sentencing.

Based on General District Court CMS data for FY2020 and FY2021, 550 offenders were sentenced for a misdemeanor protective order violation under § 18.2-60.4. The majority (76.5%) of offenders received a jail term with a median sentence of 20 days. The remaining 23.5% 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 cases that may be affected cannot be determined, the potential impact on community corrections cannot be quantified.

Virginia's Sentencing Guidelines. Violations of protective orders under § 18.2-60.4 are not covered by the Sentencing Guidelines when these crimes are the primary, or most serious, offense. However, 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 correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase direct care (juvenile correctional center or alternative commitment placement) bed space needs.

¹ Excludes 2,058 protective orders requested pursuant to §§ 19.2-152.9 and 19.2-152.10 for which the statute of issuance was uncertain.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal will not increase the bed space needs of juvenile detention facilities.

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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