



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 486 (Patron – McClellan)

LD#: 22103935

Date: 01/07/2022

Topic: Workplace violence 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:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

**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 § 19.2-152.11 and adds § 19.2-152.10:1, pertaining to protective orders in the workplace. The proposal enables an employer or its authorized agent to petition the court for a preliminary protective order pursuant to § 19.2-152.9 or a protective order pursuant to § 19.2-152.10 to protect the health and safety of its employees. The venue for a workplace protective order is defined by the proposal as the jurisdiction where the workplace is located.

Currently, under § 18.2-60.4, violations of protective orders issued pursuant to §§ 19.2-152.8, 19.2-152.9, or 19.2-152.10 are punishable as 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 subject to a six-month mandatory minimum term of incarceration. It is also a Class 6 felony for a person who is the subject of a protective order to 1) commit assault and battery resulting in injury to a protected party, 2) stalk a protected party, 3) enter the home of a protected party while he or she is present (or wait in the home until the protected party arrives), or 4) violate the order while armed with a deadly weapon.

According to § 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 Case Management System (CMS) for General District Courts and Juvenile and Domestic Relations Courts, 9,296 protective orders were issued during calendar year 2020 under the provisions of §§ 19.2-152.9 or 19.2-152.10. Data are not sufficient to estimate the number of protective orders that would be issued at the request of employers nor the number of individuals who would subsequently violate workplace protective orders. 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. Currently, violations of protective orders under § 18.2-60.4 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 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.

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 of the Code of Virginia, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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