



Fiscal Impact Statement for Proposed Legislation
Virginia Criminal Sentencing Commission

House Bill 1852
(Patron – Arnold)

LD#: 25101890

Date: 12/19/2024

Topic: Definition of a family or household member

Fiscal Impact Summary:

<ul style="list-style-type: none"> • State Adult Correctional Facilities: \$50,000 * • Local Adult Correctional Facilities: Cannot be determined • Adult Community Corrections Programs: Cannot be determined 	<ul style="list-style-type: none"> • Juvenile Direct Care: Cannot be determined ** • Juvenile Detention Facilities: Cannot be determined ** <p style="text-align: center;">** Provided by the Department of Juvenile Justice</p>
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* 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 2024, 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 expands the definition of “family or household member” in § 16.1-228, for the purposes of definitions relating to Juvenile and Domestic Relations courts and multiple criminal and procedural statutes, to clarify that an individual does not have to currently be or previously have been in a romantic, dating, or sexual relationship with another person for the individual to be considered a family or household member if such individual cohabits or, within the previous 12 months, cohabited with the other person and any children of either of them then residing in the same home.

The definition of “family or household member” in § 16.1-228 applies to all of Chapter 11 of Title 16.1 (Juvenile and Domestic Relations Courts), which includes violations of protective orders issued pursuant to §§ 16.1-253.1, 16.1-253.4, and 16.1-279.1. The definition in § 16.1-228 is specifically referenced in § 18.2-46.3(B) (recruitment of persons for a criminal street gang), § 18.2-57.2 (assault and battery against a family or household member), § 18.2-60.3 (stalking), and § 19.2-81.3 (arrest without a warrant in certain cases). As such, the proposal would expand the applicability of existing felonies and misdemeanors.

Currently, under § 18.2-57.2, assault and battery against a family or household member is punishable as a Class 1 misdemeanor. The penalty is elevated to a Class 6 felony if it is alleged in the warrant, petition, information or indictment that the offender has been previously convicted of any two of the specified offenses against a family or household member. Stalking in violation of § 18.2-60.3 is punishable as a Class 1 misdemeanor for the first conviction and a Class 6 felony for any second or subsequent conviction within five years. Under § 16.1-253.2¹, many violations of protective orders are punishable as Class 1

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)

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.²

Analysis:

While the number of individuals who may be affected by the proposal cannot be determined, such offenders may be sentenced similarly to those who are currently convicted under existing provisions that define family or household member by referencing § 16.2-228 (see table below).

Offenders Convicted of Select Offenses, FY2023-FY2024

Primary Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
Recruit person to join/remain in gang – use/threat of force against family/household member, felony (§ 18.2-46.3(B)) ^a	0	N/A	N/A	N/A	N/A	N/A
Assault and battery against a family member, misdemeanor (§ 18.2-57.2) ^b	7,498	62.1%	37.9%	1.3 mos.	N/A	N/A
Assault and battery against a family member 3 rd offense, felony (§ 18.2-57.2) ^c	332	24.4%	50.9%	7.0 mos.	24.7%	1.5 yrs.
Stalking, misdemeanor (§ 18.2-60.3(A)) ^d	214	38.3%	61.7%	3.0 mos.	N/A	N/A
Stalking, second offense within 5 years, felony (§ 18.2-60.3(B)) ^a	4	0.0%	25.0%	6.0 mos.	75.0%	5.0 yrs.
Protective order violation, 1 st off., misdemeanor (§ 16.1-253.2) ^b	2,425	13.5%	86.5%	0.3 mos.	N/A	N/A
Protective order violation, 2 nd off., misdemeanor (§ 16.1-253.2) ^b	79	12.7%	87.3%	2.0 mos.	N/A	N/A
Protective order violation, felony (§ 16.1-253.2) ^a	98	9.2%	64.3%	6.0 mos.	26.5%	1.5 yrs.

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

^aSource: Supreme Court of Virginia – Circuit Court Case Management System (CMS), FY2023-FY2024

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.

² Under current law, felony offenses defined § 18.2-46.3(B) (gang recruitment by force/threats), are eligible for the enhanced sentence credits specified in § 53.1-202.3, whereby offenders will serve a minimum of 67% of the sentence ordered by the court. Felony offenses defined in § 18.2-57.2 (assault of family member), § 18.2-60.3 (stalking) and § 16.2-253.2 (protective order violations) are ineligible for the enhanced sentence credits specified in § 53.1-202.3; therefore, individuals convicted of these felony offenses must serve a minimum of 85% of the sentence ordered by the court. The proposed legislation does not change the earned sentence credits available to offenders convicted of these felonies.

^bSource: Supreme Court of Virginia – Juvenile & Domestic Relations Case Management System (CMS), FY2023-FY2024

^cSource: Virginia Criminal Sentencing Commission - Sentencing Guidelines Database, FY2023-FY2024

^dSource: Supreme Court of Virginia – General District Court Case Management System (CMS), FY2023-FY2024

According to the Office of the Executive Secretary of the Supreme Court of Virginia, during calendar year 2023, 37,587 emergency protective orders related to family abuse were issued under § 16.1-253.4. In addition, 11,597 preliminary protective orders were issued under § 16.2-253.1 and 5,566 protective orders were issued under § 16.1-279.1 for family abuse.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the definition of family and household members, the proposal may result in additional felony convictions and thereby increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal. Therefore, the magnitude of the impact on prison beds cannot be estimated.

Local adult correctional facilities. Similarly, the proposal may also increase the local-responsible (jail) bed space needs of the Commonwealth. However, the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's Sentencing Guidelines. Felony convictions under § 18.2-57.2 are currently covered by Guidelines. Other felony convictions impacted by the change in definition under the proposed sections of the *Code* are not covered by the Guidelines as the primary, or most serious, offense. Such convictions, however, could augment the Guidelines recommendation (as additional offenses) if the most serious offense at sentencing is covered by the Guidelines. Felony offenses in §§ 18.2-46.3(B), 18.2-57.2, 18.2-60.3, 16.1-253.2 are defined as violent under § 17.1-805(C) for the purposes of the Guidelines. No adjustment to the Guidelines is 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 2024, 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.