



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill 2427 (Patron – Oates)

LD #: 25100456

Date: 10/21/2024

Topic: Unauthorized use of an electronic tracking device

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 Correctional Centers: Cannot be determined ** • Juvenile Detention Facilities: Cannot be determined ** <p>** 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 amends § 18.2-60.5, relating to the unauthorized use of an electronic tracking device. Currently, it is a Class 1 misdemeanor to install or place an electronic device through intentionally deceptive means and without consent, to track the location of any person. This offense was increased from a Class 3 to Class 1 misdemeanor in 2020.

Under the proposal, any person who consents to the installation or placement of an electronic tracking device may withdraw consent at any time, and such withdrawal of consent shall allow prosecution under this section. The proposal also elevates this Class 1 misdemeanor to a Class 6 felony if a person uses the device to track the location of a person protected by a protective order.¹

Analysis:

According to General District Court and Juvenile & Domestic Relations Court Case Management System (CMS) data for fiscal year (FY) 2019 through FY2024, 71 defendants were convicted of a misdemeanor under § 18.2-60.5 for unauthorized use of a tracking device. Of the total, 57 defendants committed the offense on or after July 1, 2020, and were convicted of a Class 1 misdemeanor. Of these 57 defendants, 33.3% received a local-responsible (jail) term with a median sentence of 0.7 months. Under the proposal, more prosecutions could proceed under this section.

¹ The proposed felony offense would be 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.

If the legislation is enacted, offenders who use an electronic tracking device to track the location of a person protected by a protective order could be convicted of the new Class 6 felony. Data are not sufficiently detailed to determine how many individuals currently convicted of a Class 1 misdemeanor would be subject to the Class 6 felony. However, affected offenders may be sentenced similarly to those currently convicted of a Class 6 felony for stalking under § 16.1-253.2(C), § 18.2-60.3(B) or § 18.2-60.4(C).

According to fiscal year (FY) 2019 through FY2024 Circuit Court CMS data, 44 offenders were convicted of a Class 6 felony for stalking under § 16.1-253.2(C), § 18.2-60.3(B) or § 18.2-60.4(C) (as the primary, or most serious, offense). Of these, 61.4% received local-responsible (jail) terms with a median sentence of 6.0 months. Another 25.0% received state-responsible (prison) terms for which the median sentence was 2.0 years. The remaining 13.6% did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. By increasing the penalty for an existing offense from a Class 1 misdemeanor to a Class 6 felony under certain circumstances, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Available data are insufficient, however, to identify the number of defendants who may be convicted of the proposed felony or to estimate the number of new state-responsible sentences that may result from enactment of the proposal. Thus, the magnitude of the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. The proposal may increase local-responsible (jail) bed space needs, but the magnitude of the impact cannot be quantified.

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

Virginia’s Sentencing Guidelines. As a new felony, convictions for the proposed offense initially would not be covered by the Sentencing 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. The proposed felony would not be defined as violent under § 17.1-805(C) for Guidelines purposes. No immediate adjustment to the Guidelines would be necessary under the proposal. If the proposal is enacted, the Sentencing Commission in the future would conduct analyses to determine the feasibility of adding the new felony to the Guidelines system.

Juvenile correctional centers. 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, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.