



# Fiscal Impact Statement for Proposed Legislation

## Virginia Criminal Sentencing Commission

### House Bill 2766 (Patron – Obenshain)

LD#: 25102810

Date: 12/23/2024

Topic: Preliminary protective orders

#### Fiscal Impact Summary:

<ul style="list-style-type: none"> <li>• <b>State Adult Correctional Facilities:</b> \$50,000 *</li> <li>• <b>Local Adult Correctional Facilities:</b> Cannot be determined</li> <li>• <b>Adult Community Corrections Programs:</b> Cannot be determined</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Juvenile Direct Care:</b> Cannot be determined **</li> <li>• <b>Juvenile Detention Facilities:</b> Cannot be determined **</li> </ul> <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 changes the punishment and sentencing requirements for a violation of a preliminary child protective order issued under § 16.1-253 and a protective order entered in a dispositional order pursuant to § 16.1-278.2 (C) related to abused, neglected, or abandoned children or children without parental care.

Under current law, the maximum penalty for violations of child protective orders issued under § 16.1-253 is a charge for contempt of court; however, if the violation involves an act that endangers the child's life or health, or results in bodily injury to the child, it is punishable as a Class 1 misdemeanor. In such cases, the court is not required to enter a permanent family abuse protective order (i.e., a protective order with a maximum duration of two years) upon a conviction of a violation of a preliminary child protective order.

Under the proposal, violations of preliminary protective orders issued under § 16.1-253 and § 16.1-16.1-278.2(C) would be punishable in the same manner as violations of preliminary, emergency, and permanent family abuse protective orders issued under other sections of Title 16.1. In essence, the proposal returns these sections to the language in effect prior to July 1, 2021.

Per § 16.1-253.2, many violations of family abuse protective orders are punishable as Class 1 misdemeanors.<sup>1</sup> However, if an individual is convicted of a second offense of violating a protective order within five years of

<sup>1</sup> Violations of 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 subject of the protective order violates provisions that prohibit him from: (i) going or remaining upon land, buildings, or premises; (ii) committing further acts of family abuse; or (iii) committing a criminal offense, or which prohibits

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 within 20 years (with at least one involving an act or threat of violence) is guilty of a Class 6 felony and must serve a mandatory minimum term of six months. Finally, 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 protected party resulting in bodily injury or stalks any protected party, 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.<sup>2</sup> If the protective order violation does not meet any of the criteria for punishment as a felony or misdemeanor, it is punishable as contempt of court.

**Analysis:**

According to Juvenile & Domestic Relations Court Case Management Systems (CMS) data for fiscal year (FY) 2023 and FY2024, 29 offenders were convicted of a Class 1 misdemeanor for violating a protective order issued under § 16.1-253. Of these offenders, 23 of the 29 (79.3%) received a local-responsible (jail sentence for which the median sentence was 1.0 month. Data are insufficient to estimate the number of these offenders who may be punished more harshly under § 16.1-253.2 if the proposal is enacted. Data are also insufficient to estimate the number of violations associated with § 16.1-278.2(C) that, under the proposal, will be punished under § 16.1-253.2.

Individuals punished under § 16.1-253.2 as a result of the proposal may be sentenced similarly to those currently convicted under § 16.1-253.2 for protective order violations (see table below).

**Offenders Convicted of Protective Order Violations, 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
Circuit Court - Felony protective order violation - family abuse (§ 16.1-253.2) <sup>a</sup>	98	9.2%	64.3%	6 mos.	26.5%	1.5 yrs.
Juv. & Dom. Relations Court - Misdemeanor protective order violation (§ 16.1-253.2) - orders issued under §§ 16.1-253.1, 16.1-253.4, 16.1-278.14, 16.1-279.1 or 20-13(b) <sup>b</sup>	2,713	19.9%	80.1%	10 dys.	N/A	N/A

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

Sources: <sup>a</sup>Supreme Court of Virginia - Circuit Court Case Management System (CMS), FY2023-FY2024;

<sup>b</sup>Supreme Court of Virginia – Juvenile & Domestic Relations Case Management System (CMS), FY2023-FY2024;

<sup>c</sup>Supreme Court of Virginia - General District Court Case Management System (CMS), FY2023-FY2024;

**Impact of Proposed Legislation:**

**State adult correctional facilities.** Because it potentially expands the applicability of existing felony offenses, the proposal may 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. Thus, the magnitude of the impact on prison beds cannot be determined.

contact by the subject with the allegedly abused person or family or household members of the allegedly abused person. Otherwise, violations of protective orders issued under § 16.1-279.1 and § 19.2-152.10 are punishable as contempt of court.

<sup>2</sup> Under current law, felony offenses punishable under § 16.1-253.2 are not eligible for the enhanced sentence credits specified in § 53.1-202.3; therefore, individuals convicted of these felonies will 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 under this section.

**Local adult correctional facilities.** Similarly, the proposal may also increase local-responsible (jail) bed space needs; however, 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.** Currently, felony violations of protective orders punishable under § 16.1-253.2 are not covered by the Sentencing Guidelines when these crimes are the primary, or most serious, offense. Guidelines do not apply if the most serious offense at sentencing is a misdemeanor. Any such convictions may augment the Guidelines recommendation (as additional offenses) if the most serious offense at sentencing is covered by the Guidelines. The felonies in § 16.1-253.2 are defined as violent under § 17.1-805(C) for Guidelines purposes. No adjustment to the Guidelines would be 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.

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**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.**

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