

# Virginia State Crime Commission

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## Domestic Abuser Registry

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2011

# Domestic Abuser Registry

## Executive Summary

During the 2011 Regular Session of the Virginia General Assembly, Delegate Daniel Marshall introduced House Bill 1932 (HB 1932), which sought to create a domestic abuser registry in Virginia. The bill would require any adult convicted of a violation of a protective order or assault and battery against a family or household member to register for 15 years. The bill was referred by the House Courts of Justice Committee to the Crime Commission for review.

Crime Commission staff utilized several methodologies to assess the issue, including collecting relevant literature, obtaining data related to domestic abuse convictions in Virginia, and examining other states' statutes and registries. Data obtained by staff revealed a combined total of 48,822 domestic abuse convictions in circuit courts, general district courts, and juvenile and domestic relations (JDR) district courts between Fiscal Years (FY) 07 and FY11. Of those convictions, 97% were for misdemeanor domestic abuse offenses and 3% were for felony domestic abuse offenses.

There was very little literature available concerning domestic abuser registries, as there are no state run domestic abuser registries. However, there is the National Domestic Violence Registry which serves as the first national domestic violence database available to the public.

As a result of this study effort, no formal recommendations were made by the Crime Commission.

## Background

House Bill 1932 was introduced by Delegate Daniel Marshall during the 2011 Regular Session of the Virginia General Assembly.<sup>1</sup> As introduced, the bill would have established a domestic abuser registry and required any adult who has been convicted of a violation of Va. Code §§ 16.1-253.2 (violation of a family abuse protective order), 18.2-57.2 (assault and battery against a family or household member), or 18.2-60.4 (violation of a protective order) to register for 15 years. The bill proposed that anyone failing to register or re-register would be charged with a Class 6 felony. It is important to note that a person originally convicted of a misdemeanor domestic abuse crime could then be found guilty of a felony if they failed to register or re-register properly.

There are 12 crimes that penalize domestic abuse in the Virginia Code:

- violation of a family abuse protective order;<sup>2</sup>

- violation of a family abuse protective order (violence), second offense within five years;<sup>3</sup>
- violation of a family abuse protective order (violence), third offense within five years;<sup>4</sup>
- assault with serious injury to person with family abuse protective order;<sup>5</sup>
- enter home of someone with protective order;<sup>6</sup>
- simple assault against a family member;<sup>7</sup>
- simple assault against a family member, third or subsequent conviction within 20 years;<sup>8</sup>
- violation of protective order;<sup>9</sup>
- violation of protective order (violence), second offense within five years;<sup>10</sup>
- violation of protective order (violence), third offense within five years;<sup>11</sup>
- assault with serious injury to person in violation of protective order;<sup>12</sup> and,
- entering the home of person in violation of a protective order.<sup>13</sup>

The fiscal implications of HB 1932 would have affected the Virginia Department of Corrections (DOC), the Virginia State Police (VSP), and the local and regional jails. According to the Virginia Criminal Sentencing Commission (VCSC), the proposed legislation would impact state correctional beds by 114 beds by FY17, requiring \$3,085,510 to be appropriated to DOC in FY12. The proposed legislation would also impact local jail beds by 116 beds by FY17. In addition, the VSP estimates that about \$986,000 would be needed to design and develop a new registry and website and an additional \$126,411 would be needed each year to support a position to maintain the website. The cost to local law enforcement agencies was not known.<sup>14</sup>

The 2011 General Assembly extensively revised Va. Code § 18.2-60.4, relating to protective orders. As adopted, the legislation renamed "protective orders for stalking" as "protective orders" and expanded the number of persons who are eligible to obtain a protective order, by expanding the types of conduct that permit the issuance of a protective order. Previously, only stalking, sexual battery, aggravated sexual battery, or a criminal offense resulting in serious bodily injury permitted the issuance of a protective order; after 2011, any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury, could qualify for a protective order. Protective orders are now available based on such conduct, regardless of the relationship of the parties involved. The 2011 legislation made the protective order statutes under Title 19.2 and the family abuse protective orders under Title 16.1 of the Code of Virginia more consistent. For example, a family abuse protective order may now include a condition prohibiting the abusing person from committing a criminal offense that results in injury to person or property. The 2011 legislation also made the penalties for violating a protective order consistent with the penalties for violating a family abuse protective order. Prior to 2011, no changes had been made to Va. Code § 18.2-60.4 since 2003.<sup>15</sup>

Virginia Code § 16.1-253.2, relating to family abuse protective orders, has not been modified by the General Assembly since 2007. The 2007 legislation created a mandatory minimum term of confinement of 60 days for any person convicted of a second violation of a protective order when the offense was committed within five years of a conviction for a prior offense and when either the current incident or prior offense

was based on an act or threat of violence. It also increased the penalty for a third or subsequent violation of a protective order, committed within 20 years of the first conviction, if either the instant or any of the prior offenses was based on an act or threat of violence, from a Class 1 misdemeanor to a Class 6 felony with a mandatory minimum term of confinement of six months.<sup>16</sup>

## Literature Review

Literature shows that domestic violence is not as simple as one partner physically harming another. Domestic violence can consist of a complex range of controlling behaviors including physical, emotional, sexual and economic maltreatment, isolation, blaming, intimidation, and threats.<sup>17</sup>

There is both support and opposition over the prospect of domestic violence registries. Supporters believe that the most important aspect of a registry would be to raise awareness of domestic violence.<sup>18</sup> Additionally, a registry could serve as a resource for both victims and potential victims. Supporters of domestic violence registries believe that they could reduce victimization by allowing individuals to look up a potential partner to ensure that he or she has not been placed on a registry for a domestic abuse crime.<sup>19</sup> On the other hand, opponents of the registry argue that it may provide a false sense of security if a partner's name is not found,<sup>20</sup> especially if an individual has committed acts of domestic abuse in the past, but was never convicted in a court of law. Additionally, individuals who simply have a restraining order against them could eventually be included in the category of domestic abusers and be required to register, possibly creating further stigmatization for a certain group of people never convicted of a crime. Other negative consequences to creating and placing offenders on a domestic abuser registry could include potential violations of the abuser's privacy, possible disclosure of the victim's identity, and the difficulty of trying to find a job once placed on the abuser registry.

## Other Registries

The National Domestic Violence Registry, a non-profit organization, is the first national database for domestic violence convictions available to the public. It allows the public to search for an offender by name or by state. The National Domestic Violence Registry provides the conviction records of offenders who have been found guilty of domestic violence and domestic violence-related offenses, such as physical battering, stalking, criminal confinement, intimidation, strangulation, and domestic violence-based sex offenses.<sup>21</sup> They provide this data free of charge to the general public. There is no fiscal impact to any state. The registry also has the highest level of victim and offender privacy allowable under the law and mirrors the sex offender registry with a few exceptions.

Crime Commission staff conducted a national review of domestic abuser registries and found that there are no state-run public registries. However, some states, including

Connecticut, Georgia, Hawaii, Kansas, Kentucky, Mississippi, Nevada, and Texas have introduced legislation over the past several years that would have created a domestic abuser registry. To date, none of this legislation has passed. While it is not a state run registry, the Kansas Bureau of Investigation has created an online offender registry search form that allows individuals to search for a particular offender after providing some specific information. Staff found that some states have developed databases that are similar to a registry, but are only available to members of the law enforcement community, not the public.

There is one local ordinance that allows for a domestic abuser registry. In 2009, Suffolk County, New York, passed an ordinance requiring the county to establish a public domestic violence offender registry, operating in a manner similar to a sex offender registry. Currently, this registry has yet to be completed.<sup>22</sup>

## Conviction Data

Crime Commission staff requested data from the VCSC to obtain a better understanding of domestic abuse convictions across the Commonwealth. Specifically, conviction data was requested for the total number of convictions in circuit courts, general district courts and JDR courts for domestic abuse offenses under §§ 16.1-253.2, 18.2-60.4, and 18.2-57.2. The following figures are based on concluded cases that resulted in a conviction.

There were a combined total of 48,822 domestic abuse convictions in circuit, general district and JDR courts between FY07 and FY11. Of those convictions, 42,975 occurred in JDR courts, 5,527 occurred in circuit courts, and 320 occurred in general district courts.<sup>23</sup> Of those 48,822 convictions, 97% (47,327 of 48,822) were for misdemeanor domestic abuse offenses:

- 39,199 were for simple assaults against a family member under § 18.2-57.2(A);
- 7,842 were for misdemeanor violations of protective orders under § 16.1-253.2; and,
- 286 were for misdemeanor violations of protective orders under § 18.2-60.4.

The remaining 3% (1,495 of 48,822) of convictions were for felony domestic abuse offenses:

- 1,354 were for assaults against a family member, third or subsequent offense, under § 18.2-57.2(B);
- 141 were for felony violations of protective orders under § 16.1-253.2; and,
- 0 convictions for felony violations of protective orders under § 18.2-60.4.

## Conclusion

If Virginia were to create a domestic abuser registry, it would be the first, state run registry of its kind. While some people believe a domestic abuser registry could be used as a tool for predicting future behavior of certain offenders, or for tracking and treating abusers, others believe that a registry would simply be another tool of limited utility that could end up stigmatizing a group of individuals, sometimes unfairly. The Crime Commission took no action regarding this issue.

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<sup>1</sup> H.B. 1932, 2011 Gen. Assemb., Reg. Sess. (Va. 2011).

<sup>2</sup> VA. CODE ANN. § 16.1-253.2.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> VA. CODE ANN. § 18.2-57.2.

<sup>8</sup> Id.

<sup>9</sup> VA. CODE ANN. § 18.2-60.4.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Fiscal impact statement for House Bill 1932 (2011), <http://lis.virginia.gov/cgi-bin/legp604.exe?111+oth+HB1932IMP>.

<sup>15</sup> VA. CODE ANN. § 18.2-60.4.

<sup>16</sup> VA. CODE ANN. § 16.1-253.2.

<sup>17</sup> Catherine Simmons and Peter Lehmann, *Exploring the Link Between Pet Abuse and Controlling Behaviors in Violent Relationships*, 22(9) J. of Interpers. Viol. 1211-1222 (2007).

<sup>18</sup> Office of Legislative Research, Conn. Gen. Assemb., Domestic Violence Registries, 2011-R-0196 (2011), available at <http://www.cga.ct.gov/2011/rpt/2011-R-0196.htm>.

<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> Information taken from the National Domestic Violence Registry available at [www.domesticviolencedatabase.org](http://www.domesticviolencedatabase.org).

<sup>22</sup> As of September 20, 2011.

<sup>23</sup> JDR and general district courts all participate in their respective court case management systems. Fairfax, Alexandria, and Prince William were not participating in the Supreme Court's Circuit Court Case Management System during FY07-FY10. During FY11, Prince William joined the Supreme Court's system and Virginia Beach left the Supreme Court's system. Localities not participating in the system in a particular year are not included in that year's figures.