



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 260

Amendment in the Nature of a Substitute
(Patron Prior to Substitute – McQuigg)

Date Submitted: 02/05/02

LD #: 02-5275844

Topic: Infectious biological substances and imitations

Proposed Change:

Amends §18.2-52.1 to define, include additional acts, and increase the penalties for offenses involving “infectious biological substances.” An “infectious biological substance” means any bacteria, viruses, fungi, protozoa, or rickettsiae capable of causing death or serious bodily injury; an “imitation infectious biological substance” is any substance that is not an infectious biological substance and which, due to its overall appearance, would likely be mistaken for an infectious biological substance. The proposed statute makes it a Class 3 felony for any person to damage or attempt to damage, any facility, equipment or material involved in the sale, manufacturing, storage or distribution of an infectious biological substance, with the intent to injure another by releasing the substance. The proposal makes it a Class 3 felony for any person to manufacture, sell, give, distribute or possess with intent to distribute an infectious biological substance when he has reason to know that the substance will be unlawfully transmitted or for a person to unlawfully transmit an infectious biological substance with the intent to injure another. Any person possessing an infectious biological substance with the intent to threaten, harass, intimidate or injure another would be guilty of a Class 4 felony. It would be a Class 4 felony to use an imitation infectious biological substance with the intent to threaten, harass or intimidate another. Nothing in the proposed legislation prohibits the authorized, lawful manufacture, transportation, distribution, use or possession of an infectious biological substance or its imitation.

Current Practice:

Under §18.2-52.1, it is a Class 5 felony to possess an infectious biological substance capable of causing death with the intent to injure another. It is a Class 4 felony to damage or attempt to damage any facility, equipment or material involved in the sale, manufacturing, storage or distribution of an infectious biological substance with the intent to injure another. Possessing an infectious biological substance or an imitation substance with the intent to threaten, harass or intimidate is currently not covered by this statute. Analysis of CY1999 and CY2000 data from the Pre/Post-Sentence Investigation (PSI) database reveals no felony convictions for violations of §18.2-52.1. Convictions under §18.2-52.1 are not covered by the guidelines as the primary offense but augment the guidelines recommendation if a covered offense is the most serious at conviction.

Impact of Proposed Legislation:

The impact of the proposed legislation on state-responsible (prison) bed space cannot be quantified. PSI data indicate that there are no recent felony convictions for violations of the current statute. Increasing the statutory maximum penalty for certain acts from 10 years (Class 4 or 5 felony) to 20 years (Class 3 felony) is unlikely to affect the state-responsible (prison) bed space needs within the six-year window specified in §30-19.1:4 for legislative impact statements. However, acts involving the possession of an infectious biological substance with the intent to threaten, harass or intimidate and acts related to imitation infectious biological substances would constitute new crimes for which no background data are available. Therefore, based on these new elements, the impact cannot be quantified. It should be noted that a judge may suspend all or part of the sentences imposed for these crimes or set the sentences to run concurrently with sentences for other offenses. No adjustment to the sentencing guidelines would be necessary under the proposal.

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 and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.