



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 421

(Patrons – Rerras and Stolle)

Date Submitted: 12/21/01

LD #: 02-4200522

Topic: Bioterrorism

Proposed Change:

Amends §18.2-52.1 to increase the penalty for possessing a pathogen capable of causing death with the intent to injure another to a Class 3 felony; the penalty for destroying or damaging, or attempting to destroy or damage, any facility or material involved in the manufacturing, distribution or storage of such a pathogen with the intent to harm another would also be increased to a Class 3 felony under the proposal. The proposal adds language to §18.2-52.1 to make it a Class 3 felony to use the mail or any other method of transmission to manufacture, store, or release a pathogen capable of causing infection, disease or death with the intent to harm another. The proposed language in §18.2-52.1 replaces the term “infectious biological substance” with the “pathogen” and expands the current statute to include spirochete, yeast or other living bodies or viable particles or other microorganisms not perceptible to the naked eye that are capable of causing death. Also, §18.2-52.1 would be extended to cover acts of poisoning or infecting any source of water, food, drink, prescription drugs, or over the counter medications. In addition, §18.2-54.2 would be revised specifically to include acts of adulterating food, drink, medications or cosmetics with intent to cause infection but not injury or death. Finally, §18.2-144 would be amended to include infection or spreading of infection through animals.

Current Practice:

Under §18.2-52.1, it is a Class 5 felony to possess an infectious biological substance with the intent to injure another. It is a Class 4 felony to destroy, damage, or attempt to destroy or damage any facility, equipment or material involved in the manufacture, distribution or storage of an infectious biological substance capable of causing death with the intent to injure another by releasing the substance.

It is a Class 3 felony to administer, or attempt to administer, any poison or destructive substance in food, drink, or medicine, or to poison any spring, well or reservoir of water with the intent to kill or injure another person under §18.2-54.1. Adulteration of food, drink, medicine, cosmetic or other substance with intent to kill or injure is a Class 3 felony under §18.2-54.2.

Unless otherwise provided for by law, it is a Class 5 felony under §18.2-144 to maliciously shoot, stab, wound, cause bodily injury to, or to poison any horse, mule, pony, cattle or other livestock with the intent to maim, disfigure, disable or kill the animal or defraud an insurer. It is a Class 1 misdemeanor to commit such acts on fowl or a companion animal, but the penalty is elevated to a Class 6 felony for a second or subsequent conviction if the current or any previous violation resulted in the death or euthanasia of the animal.

According to FY2001 Local Inmate Data System (LIDS) data, five offenders held pre- or post-trial in jail were convicted of a misdemeanor under §18.2-144 for poisoning or maiming fowl or a

companion animal. Of those, four offenders (80%) received a local-responsible (jail) sentence with a median sentence was 12 months (see *Background Sentencing Information* below). The remaining offender, also convicted of other charges, received a state-responsible (prison) sentence. The LIDS data did not contain any convictions under §§18.2-52.1, 18.2-54.1, or 18.2-54.2.

Pre/Post-Sentence Investigation (PSI) data for calendar years (CY) 1999 and 2000 reveal that there were seven felony convictions under §18.2-144 for poisoning or maiming animals. Of those, 42.8% received a state-responsible (prison) term with a median sentence of 17 months. There were no convictions under §§18.2-52.1, 18.2-54.1, and 18.2-54.2 found in PSI data.

Currently, convictions under §§18.2-54.1 and 18.2-54.2 are covered by the guidelines. Convictions under §§18.2-52.1 and 18.2-144 are not covered by the guidelines as the primary offense but may augment the sentence recommendation as additional offenses.

Background Sentencing Information

Misdemeanor Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Jail Sentence
Poison or maim fowl/ companion animal (§18.2-144)	5	0%	80%	20%	12 mo.

Note: Includes only convictions of those held in the local jail pretrial or sentenced to serve time post-trial.
Data Source: FY2001 Local Inmate Data System (LIDS)

Felony Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Prison Sentence
Poison or maim animals (§18.2-144)	7	28.6%	28.6%	42.8%	17 mo.

Data Source: CY1999 and CY2000 Pre/Post-Sentence Investigation (PSI) database

Impact of Proposed Legislation:

The proposed legislation raises the penalty structure, expands the definitions of existing crimes and defines a new crime in the *Code of Virginia*. Under §18.2-52.1, possession of a biological substance with the intent to injure and damaging a facility involved with infectious biological substances with intent to injure would be raised from a Class 5 felony to a Class 3 felony. However, no cases were found for these offenses in LIDS or PSI data. The impact of this portion of the proposed legislation on state-responsible (prison) bed space cannot be quantified, but it is expected to be small.

Data is insufficient to determine the impact, if any, of the definitional changes to these statutes or the addition of using the mail or other transmission method to manufacture, store or release a pathogen with the intent to injure. While there is the potential of an impact on state-responsible (prison) bed space needs due to this portion of the proposed legislation, it cannot be quantified. No adjustment to the 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.