



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 514

(Patron – Stolle)

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LD #: 02-5269253

Topic: Crimes committed for terrorism

Proposed Change and Current Practice:

Amends §§ 18.2-18, 18.2-31, 18.2-51.1, 18.2-53.1, 18.2-54.1, 18.2-85, 18.2-152.4, 19.2-11.01, 19.2-61, 19.2-66, 19.2-70.2, 19.2-215.1, and 19.2-386.1 through 19.2-386.5 of the *Code of Virginia* and in Title 18 Chapter 4 adds an article numbered 2.2 consisting of sections numbered 18.2-46.4 through 18.2-46.9.

This proposal is a comprehensive effort to revise the *Code of Virginia* to address terrorism. Penalties are enhanced in some cases, procedures are revised and in other cases specific terrorism laws are proposed. The following table summarizes the current practice and the proposed changes to the *Code of Virginia*.

Statute & Description of Crime or Procedure	Current Practice	Description of Proposed Change
§18.2-18 Principals in the second degree or accessories before the fact	<ul style="list-style-type: none"> Convicted and punished as if principal in the first degree Capital murder punished as first degree murder except: <ol style="list-style-type: none"> Killing for hire Killing directed by a person engaged in a continuing criminal enterprise Punished as principal in the first degree 	<ul style="list-style-type: none"> If capital murder part of an act of terrorism – punished as principal in the first degree
§18.2-31 Capital murder	<ul style="list-style-type: none"> No specific reference to premeditated killing as part of an act of terrorism 	<ul style="list-style-type: none"> If part of an act of terrorism – Class 1 felony
§18.2-46.5 Acts of terrorism	<ul style="list-style-type: none"> No specific offense to commit, conspire to commit, or aid or abet the commission of an act of terrorism 	<ul style="list-style-type: none"> If base offense is punishable by death, life imprisonment, or a term of imprisonment of 20 years or more – Class 2 felony If base offense is punishable by a term of imprisonment of less than 20 years – Class 3 felony Separate and distinct offense

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§18.2-46.6 Membership in, or active participant with, a terrorist organization	<ul style="list-style-type: none"> No specific offense 	<ul style="list-style-type: none"> Class 3 felony
§18.2-46.7 Possession, manufacture, distribution, etc. of weapon of terrorism	<ul style="list-style-type: none"> Fire bombs and explosives are covered under §18.2-85 as a Class 5 felony Certain types of intimidation offenses are covered under §18.2-422 wearing masks (Class 6 felony), §18.2-433.2 paramilitary activity (Class 5 felony), §§18.2-416, 18.2-417 abusive language (Class 3 misdemeanor), §18.2-60 threat by communication (Class 6 felony) and other extortion and assault related statutes 	<ul style="list-style-type: none"> Weapon of terrorism or fire bomb , explosive material, or device with intent to commit an act of terrorism – Class 2 felony Threat to use weapon of terrorism – Class 3 felony
§18.2-46.9 Acts of terrorism	<ul style="list-style-type: none"> No specific procedures related to seizure of property from convicted terrorist 	<ul style="list-style-type: none"> All moneys, real and personal property, interests and profits traceable to an act of terrorism are subject to seizure
§18.2-51.1 Malicious wounding to law-enforcement officer or firefighter	<ul style="list-style-type: none"> Search and rescue personnel and emergency medical services providers not included 	<ul style="list-style-type: none"> Includes search and rescue personnel and emergency medical services providers
§18.2-51.1 Unlawful wounding to law-enforcement officer or firefighter	<ul style="list-style-type: none"> Search and rescue personnel and emergency medical service providers not included 	<ul style="list-style-type: none"> Includes search and rescue personnel and emergency medical service providers
§18.2-53.1 Use of a firearm in committing a felony	<ul style="list-style-type: none"> 3 or 5 year mandatory sentence applies to firearms used in a: murder, rape, forcible sodomy, object sexual penetration, robbery, carjacking, burglary, malicious wounding, malicious wounding to a law-enforcement officer, aggravated malicious wounding, malicious wounding by mob, and abduction 	<ul style="list-style-type: none"> Applies mandatory sentences to firearms used in the commission of an act of terrorism
§18.2-54.1 Attempt to poison	<ul style="list-style-type: none"> Class 3 felony 	<ul style="list-style-type: none"> If part of an act of terrorism – Class 2 felony
§18.2-85 Manufacture fire bombs	<ul style="list-style-type: none"> Class 5 felony 	<ul style="list-style-type: none"> Class 4 felony
§18.2-85 Hoax fire bombs	<ul style="list-style-type: none"> Class 6 felony 	<ul style="list-style-type: none"> Class 5 felony

Statute & Description of Crime or Procedure	Current Practice	Description of Proposed Change
§18.2-152.4 Computer trespass	<ul style="list-style-type: none"> • Class 3 misdemeanor • Reckless damage of \$2500 or more – Class 1 misdemeanor • Malicious damage of \$2500 or more – Class 6 felony 	<ul style="list-style-type: none"> • If in commission of an act of terrorism – Class 3 felony
§19.2-11.01 Definition of victim	<ul style="list-style-type: none"> • Victim is defined as a person who has suffered physical, psychological or economic harm as a direct result of a felony, certain assault and batteries, stalking, attempted sexual battery, maiming and DWI when victim is permanently impaired 	<ul style="list-style-type: none"> • Victims of terrorism are included in the definition of victim.
§19.2-61 Definitions of wire communications	<ul style="list-style-type: none"> • Electronic communication system includes photo-electronic facilities for the transmission of electronic communications • Pen register is defined as a device which records or decodes electronic or other impulses which identify the number dialed on a telephone line • Trap and trace device is defined as a device which captures the incoming electronic or other impulses identifying the origination number 	<ul style="list-style-type: none"> • Pen register is defined as a device which records or decodes dialing, routing, addressing or signaling information transmitted by an instrument or facility • Trap and trace device is defined as a device or process which captures the originating number or other dialing, routing, addressing and signaling information
§19.2-66 When Attorney General may apply for order authorizing interception of communications	<ul style="list-style-type: none"> • Attorney General may apply for interception of communications in cases of extortion, bribery, kidnapping, murder any felony violation of §18.2-248 or §18.2-248.1, any felony violation of Chapter 29 or Title 59.1. 	<ul style="list-style-type: none"> • Circumstances when the Attorney General may apply for interception of communications expanded to include any felony violation of Virginia's Comprehensive Anti-Terrorism Act
§19.2-70.2 Application for and issuance of order for a pen register and trace device	<ul style="list-style-type: none"> • The order must specify: the telephone line the device is to be attached, the subject of the investigation, and the physical location of the device 	<ul style="list-style-type: none"> • The order must also specify if a facility other than a phone line is to be trapped or traced.
§19.2-215.1 Functions of multi-jurisdiction grand jury	<ul style="list-style-type: none"> • Limits multi-jurisdiction grand juries to selected felony criminal violations 	<ul style="list-style-type: none"> • Expands the list for which multi-jurisdiction grand juries may investigate to include any felony violation of §18.2-600.1 et seq. (Virginia's Comprehensive

Statute & Description of Crime or Procedure	Current Practice	Description of Proposed Change
		Anti-Terrorism Act)
§19.2-386.1 Commencing an action of forfeiture	<ul style="list-style-type: none"> Defines procedure for seizure under the provisions of §18.2-249 (drug crimes). 	<ul style="list-style-type: none"> Applies the same procedure for property seized under §18.2-614 (terrorism)
§19.2-386.2 Seizure of named property	<ul style="list-style-type: none"> Defines procedure for the seizure of property not seized at the time an information is filed under §18.2-249 (drug crimes) 	<ul style="list-style-type: none"> Applies the same procedure for property seized under §18.2-614 (terrorism)
§19.2-386.3 Notice of seizure for forfeiture and motion for judgment	<ul style="list-style-type: none"> Defines procedure when an information has not been filed but the property is seized under §18.2-249 (drug crimes) 	<ul style="list-style-type: none"> Applies the same procedure for property seized under §18.2-614 (terrorism)
§19.2-386.4 Records and handling of seized property	<ul style="list-style-type: none"> Defines procedure for handling property seized under §18.2-249 and §19.2-386.2 (drug crimes) 	<ul style="list-style-type: none"> Applies the same procedure for property seized under §18.2-614 (terrorism)
§19.2-386.5 Release of seized property	<ul style="list-style-type: none"> Defines procedure for the release of property seized under §18.2-249 (drug crimes) 	<ul style="list-style-type: none"> Applies the same procedure for property seized under §18.2-614 (terrorism)

Impact of the Proposed Legislation:

The impact of the proposed legislation on state-responsible (prison) bed space cannot be quantified. The majority of the proposal enhances the penalty for crimes when connected with an act of terrorism. It also expands the *Code of Virginia* to create new laws that are specific to terrorism. Databases available to the Commission are insufficient to determine the impact these portions of the proposal would have on state-responsible (prison) bed space.

However, one portion of the proposal, increasing the penalty class for offenses under §18.2-85, can be quantified because it raises the penalties for existing offenses. The penalty for manufacture of fire bombs would be raised from a Class 5 felony to a Class 4 felony under the proposed legislation. This change is not likely to result in an impact on state-responsible (prison) beds because the maximum penalty for a Class 5 felony (1–10 years) is the same as for a Class 4 felony (2-10 years). Judges are already at liberty to sentence up to ten years. Of the 14 cases where the manufacture of a fire bomb was the primary offense (CY1999 and CY2000 Pre/Post-Sentence Investigation (PSI) data), the maximum sentence was eight years (2 cases) and the median state-responsible sentence was less than two and one-half years. Furthermore, nearly 36% of the cases received no incarceration and an equal number of cases received a local-responsible (jail) sentence.

On the other hand, raising the penalty for a hoax fire bomb from a Class 6 felony to a Class 5 felony could result in an impact on state-responsible bed space because the maximum penalty for this crime would increase from 5 to 10 years. The CY1999 and CY2000 data from the Pre/Post-Sentence Investigation (PSI) database revealed that there were two cases involving a hoax fire bomb as the primary offense. Of these, one received no incarceration and the other a sentence of

four and one-half years. Analysis resulted in an estimated impact of \$0 for this portion of the proposal. However, because the impact of other aspects of the proposed legislation cannot be quantified, the overall impact of the proposal 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 and \$0 or periods of commitment to the custody of the Department of Juvenile Justice.