



## Impact Analysis on Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 514

Amendment in the Nature of a Substitute (02/06/02)

(Patron Prior to Substitute– Stolle)

Date Submitted: 02/07/02

LD #: 02-0425536

Topic: Crimes committed for terrorism

#### Proposed Change and Current Practice:

Amends §§ 2.2-511, 18.2-18, 18.2-31, 18.2-51.1, 18.2-52.1, 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, 19.2-120, 19.2-215.1, 19.2-294, 19.2-386.1 through 19.2-386.5, 24.2-233, and 52.2-8.5 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 18.2-46.10.

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"><li>• Convicted and punished as if principal in the first degree</li><li>• Capital murder punished as first degree murder except:<ol style="list-style-type: none"><li>1. Killing for hire</li><li>2. Killing directed by a person engaged in a continuing criminal enterprise (punished as principal in the first degree)</li></ol></li></ul>	<ul style="list-style-type: none"><li>• If capital murder part of an act of terrorism – punished as principal in the first degree</li></ul>
§18.2-31 Capital murder	<ul style="list-style-type: none"><li>• No specific reference to premeditated killing as part of an act of terrorism</li></ul>	<ul style="list-style-type: none"><li>• If part of an act of terrorism – Class 1 felony</li></ul>
§18.2-46.5 Acts of terrorism	<ul style="list-style-type: none"><li>• No specific offense to commit, conspire to commit, or aid or abet the commission of an act of terrorism</li></ul>	<ul style="list-style-type: none"><li>• If base offense is punishable by life imprisonment or a term of imprisonment of 20 years or more – Class 2 felony</li><li>• If base offense is punishable by a term of imprisonment of less than 20 years – Class 3 felony</li></ul>
§18.2-46.6 Threats to commit an act of terrorism	<ul style="list-style-type: none"><li>• Threat by communication §18.2-60 (Class 6 felony) and other extortion and assault related statutes</li></ul>	<ul style="list-style-type: none"><li>• Threat to use weapon of terrorism – Class 5 felony</li></ul>

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§18.2-46.7 Possession, use, manufacture, distribution, etc. of weapon of terrorism	<ul style="list-style-type: none"> <li>• Fire bombs and explosives are covered under §18.2-85 as a Class 5 felony</li> <li>• 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), and other extortion and assault related statutes</li> </ul>	<ul style="list-style-type: none"> <li>• Weapon of terrorism or fire bomb, explosive material, or device with intent to commit an act of terrorism – Class 2 felony</li> <li>• Imitation weapon of terrorism or fire bomb, explosive material, or device with intent to commit an act of terrorism – Class 3 felony</li> <li>• Imitation weapon of terrorism or fire bomb, explosive material, or device with intent interfere with government activities, compel evacuation, or put person in reasonable apprehension of harm – Class 6 felony</li> </ul>
§18.2-46.9 Acts of terrorism	<ul style="list-style-type: none"> <li>• No specific procedures related to seizure of property from convicted terrorist</li> </ul>	<ul style="list-style-type: none"> <li>• All moneys, real and personal property, interests and profits used in substantial connection with an act of terrorism are subject to seizure</li> </ul>
18.2-46.10 Acts of terrorism	<ul style="list-style-type: none"> <li>• No specific offense</li> </ul>	<ul style="list-style-type: none"> <li>• Separate and distinct offense</li> </ul>
§18.2-51.1 Malicious wounding to law-enforcement officer or firefighter	<ul style="list-style-type: none"> <li>• Search and rescue personnel and emergency medical services providers not included</li> </ul>	<ul style="list-style-type: none"> <li>• Includes search and rescue personnel and emergency medical services providers</li> </ul>
§18.2-51.1 Unlawful wounding to law-enforcement officer or firefighter	<ul style="list-style-type: none"> <li>• Search and rescue personnel and emergency medical service providers not included</li> </ul>	<ul style="list-style-type: none"> <li>• Includes search and rescue personnel and emergency medical service providers</li> </ul>
§18.2-52.1 Possession of infectious biological substances with intent to injure	<ul style="list-style-type: none"> <li>• Class 5 felony</li> </ul>	<ul style="list-style-type: none"> <li>• Class 4 felony</li> </ul>
§18.2-52.1 Destroy, damage or attempt to destroy or damage a facility, the equipment or material involving such substances capable of causing death with intent to injure	<ul style="list-style-type: none"> <li>• Class 4 felony</li> </ul>	<ul style="list-style-type: none"> <li>• Class 3 felony</li> </ul>
§19.2-61 Definitions of wire communications	<ul style="list-style-type: none"> <li>• Electronic communication system includes photo-electronic facilities for the transmission of electronic communications</li> <li>• Pen register is defined as a</li> </ul>	<ul style="list-style-type: none"> <li>• Pen register is defined as a device or process which records or decodes dialing, routing, addressing or signaling information transmitted by an instrument or facility, but</li> </ul>

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	<p>device which records or decodes electronic or other impulses which identify the number dialed on a telephone line</p> <ul style="list-style-type: none"> <li>• Trap and trace device is defined as a device which captures the incoming electronic or other impulses identifying the origination number</li> </ul>	<p>information does not include contents of communication</p> <ul style="list-style-type: none"> <li>• Trap and trace device is defined as a device or process which captures the originating number or other dialing, routing, addressing and signaling information, but information does not include contents of communication</li> </ul>
<p>§19.2-66 When Attorney General may apply for order authorizing interception of communications</p>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• No additional judges authorized to order interception of communication in cases of terrorism</li> </ul>	<ul style="list-style-type: none"> <li>• Circumstances when the Attorney General may apply for interception of communications expanded to include any felony violation of Virginia's Comprehensive Anti-Terrorism Act</li> <li>• Chief Justice is to appoint five circuit court judges within 20 miles of Richmond to grant orders authorizing the interception of communications in terrorism cases</li> </ul>
<p>§19.2-68 Application and issuance of order authorizing interception</p>	<ul style="list-style-type: none"> <li>• No procedure to deal with orders authorizing intercepts from other jurisdictions.</li> </ul>	<ul style="list-style-type: none"> <li>• Orders from other jurisdictions are to be transferred and sealed by the clerk in the appropriate jurisdiction</li> </ul>
<p>§19.2-70.2 Application for and issuance of order for a pen register and trace device</p>	<ul style="list-style-type: none"> <li>• 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</li> </ul>	<ul style="list-style-type: none"> <li>• The order must also specify if a facility other than a phone line is to be trapped or traced and record requirements must be met.</li> </ul>
<p>§19.2-120</p>	<ul style="list-style-type: none"> <li>• Certain felonies cause a judicial officer to presume that no conditions will reasonably assure the appearance of the person or the safety of the public when considering admission to bail</li> </ul>	<ul style="list-style-type: none"> <li>• Violations of §18.2-46.4 et seq. added to list</li> </ul>
<p>§19.2-215.1 Functions of multi-jurisdiction grand jury</p>	<ul style="list-style-type: none"> <li>• Limits multi-jurisdiction grand juries to selected felony criminal violations</li> </ul>	<ul style="list-style-type: none"> <li>• 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 Anti-Terrorism Act)</li> </ul>
<p>§19.2-294 Offenses against two or more statutes or ordinances</p>	<ul style="list-style-type: none"> <li>• Convictions under one statute or from one jurisdiction bars prosecution under the other.</li> </ul>	<ul style="list-style-type: none"> <li>• The provisions of this section are not to be applied to any offense involving terrorism</li> </ul>
<p>§19.2-386.1 Commencing an action of forfeiture</p>	<ul style="list-style-type: none"> <li>• Defines procedure for seizure under the provisions of §18.2-249 (drug crimes).</li> </ul>	<ul style="list-style-type: none"> <li>• Applies the same procedure for property seized under §18.2-614 (terrorism)</li> </ul>

Statute & Description of Crime or Procedure	Current Practice	Description of Proposed Change
§19.2-386.2 Seizure of named property	<ul style="list-style-type: none"> <li>Defines procedure for the seizure of property not seized at the time an information is filed under §18.2-249 (drug crimes)</li> </ul>	<ul style="list-style-type: none"> <li>Applies the same procedure for property seized under §18.2-614 (terrorism)</li> </ul>
§19.2-386.3 Notice of seizure for forfeiture and motion for judgment	<ul style="list-style-type: none"> <li>Defines procedure when an information has not been filed but the property is seized under §18.2-249 (drug crimes)</li> </ul>	<ul style="list-style-type: none"> <li>Applies the same procedure for property seized under §18.2-614 (terrorism)</li> </ul>
§19.2-386.4 Records and handling of seized property	<ul style="list-style-type: none"> <li>Defines procedure for handling property seized under §18.2-249 and §19.2-386.2 (drug crimes)</li> </ul>	<ul style="list-style-type: none"> <li>Applies the same procedure for property seized under §18.2-614 (terrorism)</li> </ul>
§19.2-386.5 Release of seized property	<ul style="list-style-type: none"> <li>Defines procedure for the release of property seized under §18.2-249 (drug crimes)</li> </ul>	<ul style="list-style-type: none"> <li>Applies the same procedure for property seized under §18.2-614 (terrorism)</li> </ul>
§24.2-233 Removal of elected and certain appointed officers by courts	<ul style="list-style-type: none"> <li>Conditions for removal of elected and certain appointed officers by courts</li> </ul>	<ul style="list-style-type: none"> <li>Conviction of a misdemeanor hate crime, when conviction has material adverse effect on conduct of such office is added</li> </ul>
§52-8.5 Reporting hate crimes	<ul style="list-style-type: none"> <li>Requirements for reporting terroristic acts</li> </ul>	<ul style="list-style-type: none"> <li>'Terroristic acts' changed to 'hate crimes'</li> </ul>

#### 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.

**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.**