



## Impact Analysis on Proposed Legislation

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### *Virginia Criminal Sentencing Commission*

### **House Bill No. 1053** **Amendment in the Nature of a Substitute** *(Patron Prior to Substitute – Albo)*

**Date Submitted:** 2/24/04

**LD #:** 04-0208204

**Topic:** Restructuring portions of Title 18.2

#### **Proposed Change:**

This proposal is recommended by the Virginia State Crime Commission and is a response to House Joint Resolution Number 687 (2001). The proposal amends, adds and repeals numerous sections of Title 18.2 of the *Code of Virginia* to restructure portions of the criminal code. Many additional revisions are ancillary but necessitated by the substantive changes to *Code* that are proposed. A summary of the proposed legislation and changes in criminal penalties follows.

- A new felony class is added to the existing six felony classes. The Class 1 felony category is renamed “capital felony,” while the Class 2 felony category is renumbered to Class 1. The new class is numbered Class 2 and carries a proposed penalty range of 5 to 40 years. Felony Classes 3 through 6, and their respective penalties, are left unchanged.
- For the crimes of kidnapping and assault, degrees of each crime are established, although penalties for many offenses remain unchanged by the proposal.
- The penalties for attempting or aiding a kidnapping are raised to the same penalties provided elsewhere in the *Code* for attempted crimes or acting as an accessory.
- The penalty for malicious wounding of a police officer is changed from 5 to 30 years to the new Class 2 felony (5 to 40 years).
- Under the proposed § 18.2-52.02, malicious wounding by caustic substance or fire is defined as a Class 2 felony (5 to 40 years); however, the current statute (§ 18.2-52), which ascribes a punishment of 5 to 30 years for this crime, is not repealed by the proposal.
- Language that currently creates a spousal exception for the crimes of forcible sodomy and object sexual penetration is eliminated, as was done with rape during the 2002 General Assembly Session; the existing crime of marital sexual assault (§ 18.2-67.2:1) is repealed by the proposal.
- The definition of violent crime under § 17.1-805 (relating to sentencing guidelines) is amended to reflect the proposed kidnapping and assault statutes; because references to existing kidnapping and assault statutes (§§ 18.2-47, 18.2-48, 18.2-48.1, 18.2-51, 18.2-51.1, and 18.2-51.2) are removed, offenders with prior convictions for kidnapping and assault under the existing provisions will not receive the scoring enhancements on the sentencing guidelines prescribed by this statute.

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- Penalties for breaking and entering into railroad cars, motor trucks, etc., are changed from a Class 4 felony (2-10 years) to a Class 5 felony (1-10 years); for such acts committed while armed with a firearm, the penalties are changed from a Class 3 felony (5-20 years) to a Class 4 felony (2-10 years).
- Use of profane language over public airways remains a Class 1 misdemeanor (0-12 months) if the language involves a threat or any illegal or immoral act; otherwise, the penalty is changed to a Class 3 misdemeanor (up to \$500 fine).
- Use of photographs in prosecution of certain burglaries (§§ 18.2-90, 18.2-91 or 18.2-92) has been eliminated under the proposed § 19.2-270.1.
- Enactment of the proposal is delayed until July 1, 2005.

### Data Analysis:

The table below provides information on offenses for which the proposal revises the penalty structure.

Felony Crime	Current Penalty	Proposed Penalty	Number of Cases (1997-2001)	Avg. Imposed Sentence (before suspended time)
Malicious wounding of a police officer (§ 18.2-51.1)	5-30 yrs.	5-40 yrs.	71	7 yrs.
Malicious wounding with a caustic substance or fire (§ 18.2-52)	5-30 yrs.	5-40 yrs.	9	8 yrs.
Attempted and conspired abduction (§ 18.2-49)	1-10 yrs.	Based on § 18.2-22, § 18.2-26	3	5 yrs.
Breaking and entering railroad car, motor truck, etc. (§ 18.2-147.1)	2-10 yrs.	1-10 yrs.	2	2.5 yrs.
Breaking and entering railroad car, motor truck, etc., armed with firearm (§ 18.2-147.1)	5-20 yrs.	2-10 yrs.	0	na
Forcible sodomy or object sexual penetration of spouse not covered by § 18.2-67.1 or § 18.2-67.2	1-20 yrs.	5 yrs.-Life	13** (FY2003 only)	5 yrs.

Data Source: FY1997 through FY2001 Pre/Post-Sentence Investigation (PSI) database;

\*\* These acts may now be prosecuted as marital sexual assault under § 18.2-67.2:1. During fiscal year (FY) 2003, following the elimination of the spousal exception clause in the rape statute (§ 18.2-61), there were 13 convictions for marital sexual assault, according to the Local Inmate Data System (LIDS)).

Note: These data reflect cases involving one count of the specified offense where the offense was the primary (or most serious) offense in the case. Data include attempted and conspired offenses. Sentencing data reflect the average sentence imposed for the specified offense and do not include sentences for other offenses at conviction.

### Impact of Proposed Legislation:

The proposed legislation may affect state-responsible (prison) bed space needs in several ways.

- (1) For those offenses whose statutory maximums have been increased by the proposal, there may be an increased need for prison beds. Many of these offenses currently have maximum penalties of ten

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years or more; thus, the proposed changes will not have an impact within the six-year window specified in § 30-19.1:4 for legislative impact statements.

- (2) Eliminating the spousal exception in forcible sodomy and object penetration cases and repealing the existing marital sexual assault provision increases the penalty for such crimes committed against spouses from a range of 1 to 20 years to a range of 5 years to life in prison.
- (3) For those offenses whose statutory minimums or maximums have decreased under the proposal, there may be a reduced need for beds associated with lower statutory penalties than under current *Code*.
- (4) Because the proposal excludes existing kidnapping and assault statutes from the definition of violent offenses under § 17.1-805, offenders with prior convictions for kidnapping or assault under current law will not receive, absent any other violent prior crimes, the sentencing guidelines scoring enhancements targeting violent offenders; this may result in lower guidelines recommendations for some offenders and a reduced need for prison beds.

In addition, decreasing the penalty for abusive and vulgar language in certain cases to a fine only may result in the need for fewer local-responsible (jail) beds.

As many of the proposed increases in maximum penalties affect crimes whose current penalty is at least ten years, this aspect of the proposal will not have an impact during the six-year forecast window required by § 30-19.1:4. The aspects of the proposal that reduce penalties and exclude existing kidnapping and assault crimes from the list of offenses that trigger sentencing guidelines enhancements may reduce the need for prison beds; for these aspects, the impact cannot be quantified. However, the impact of eliminating the spousal exception in forcible sodomy and object penetration cases can be estimated; for this aspect of the proposal, the net high state-responsible (prison) impact would be approximately one (1) bed by FY2010.

Should the proposal be adopted, a variety of changes to the sentencing guidelines would be necessary. The proposed enactment date of July 1, 2005, would allow the Virginia Criminal Sentencing Commission the time necessary to revise its guidelines in accordance with the proposed changes to Title 18.2.

**Estimated Six-Year Impact in State-Responsible (Prison) Beds**

FY05	FY06	FY07	FY08	FY09	FY10
0	0	0	0	1	1

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$28,845 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.**

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**Assumptions underlying the analysis include:**

**General Assumptions**

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary's Committee on Inmate Forecasting in 2003.
2. New cases representing state-responsible sentences were based on forecasts developed for the Secretary's Committee on Inmate Forecasting and approved in August 2003.
3. Cost per prison bed was assumed to be \$22,606 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.***
4. Cost per jail bed was based on The Compensation Board's FY2002 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$29.81 per day or \$10,889 per year. The local cost was calculated by using the daily expenditure cost of \$54.12 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$20.29 per day or \$7,410 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.***

**Assumptions relating to sentence lengths**

1. The impact of the proposed legislation on criminal provisions, which would be effective on July 1, 2004, is phased in to account for case processing time.
2. The bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2002; for sexual assault offenses the rate was 9.81%. Release dates for local-responsible felony convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by felons sentenced in FY2003 to local jails; this rate was 89.7%.
3. Increased statutory minimums may impact bed space through jury sentencing. Sentences were adjusted to reflect the dynamics of jury sentencing using information from the Sentencing Guideline (SG) database. Sentences were increased to the statutory minimum for the proportion of cases that were sentenced by a jury in violent sex offenses (rape, forcible sodomy, and object sexual penetration). For the proportion of cases where the judge suspended some of the jury-imposed time, the jury sentence was reduced by the ratio of (imposed minus suspended time)/imposed time. If the actual sentence already exceeded the proposed statutory minimum penalty, the case was presumed to have no impact.

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