



## Impact Analysis on Proposed Legislation

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### *Virginia Criminal Sentencing Commission*

#### **House Bill No. 184**

#### ***Engrossed Substitute with Amendments***

#### ***(Patron Prior to Substitute – Oder and Griffith)***

**Date Submitted:** 2/4/04

**LD #:** 04-0955444

**Topic:** Bodily injury by biological or radiological means

#### **Proposed Change:**

The proposal amends § 18.2-52 to include the use of an infectious biological substance or radiological agent. Currently, § 18.2-52 applies to bodily injury caused by any acid, lye or other caustic substance or agent, or use of any explosive or fire. A malicious injury under this statute is a felony punishable by imprisonment of five to 30 years, while an unlawful injury is punishable as a Class 6 felony.

Currently, under § 18.2-52.1, it is a Class 5 felony to possess an infectious biological substance or radiological agent with the intent to injure another, while it is a Class 4 felony to use such a material with intent to injure. The 2002 General Assembly added radiological agents to this *Code* section.

#### **Data Analysis:**

According to fiscal year (FY) 2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, there were five convictions under § 18.2-52 for assault with caustic substance or fire as the primary offense in a sentencing event. Four of those five were convicted of malicious injury under this statute; three offenders were sentenced to a state-responsible (prison) term (with a median sentence of three years), while the remaining offender did not receive an active term of incarceration. An additional offender was convicted of unlawful injury under § 18.2-52 and was sentenced to a local-responsible (jail) term of three months.

According to PSI data, there have been no convictions under § 18.2-52.1 for possessing an infectious biological substance or radiological agent, or damaging a related facility, with intent to injure another.

#### **Impact of Proposed Legislation:**

The proposed legislation may have an impact on the bed space needs of the Commonwealth. This proposal expands the existing statute to include additional means of violating § 18.2-52. The databases available to the Commission are insufficient to provide information on the number of specific incidences that may be affected by the proposed legislation; however, data did not reveal any convictions under § 18.2-52.1 for possessing an infectious biological substance or radiological agent with intent to injure another. Therefore, the impact of the proposal is expected to be small.

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The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.

Convictions under § 18.2-52 are covered by the sentencing guidelines, as well as attempts and conspiracies to commit any of those crimes. 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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

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