



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 184

Amendment in the Nature of a Substitute (Patron Prior to Substitute – Oder and Griffith)

Date Submitted: 1/30/04

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.

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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