



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### REVISED

#### Senate Bill No. 1219

#### *Amendment in the Nature of a Substitute*

#### *(Patron Prior to Substitute – Obenshain)*

**LD#:** 09-0901288

**Date:** 2/18/2009

**Topic:** Hanging noose on property to intimidate

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
Cannot be determined (likely to be small)
- **Local Adult Correctional Facilities:**  
Cannot be determined (likely to be small)
- **Adult Community Corrections Programs:**  
Cannot be determined (likely to be small)

- **Juvenile Correctional Centers:**  
Cannot be determined
- **Juvenile Detention Facilities:**  
Cannot be determined

#### Summary of Proposed Legislation:

The proposal adds § 18.2-423.2 to the *Code of Virginia*. Under the proposal, any person with intent to intimidate, who displays a noose on the private property of another without permission, or displays a noose on a highway or other public place in a manner having a direct tendency to place another person in reasonable apprehension of death or bodily injury would be guilty of a Class 6 felony.

#### Analysis:

An internet search suggests that, in Virginia, there have been at least four separate cases involving nooses since December 2006.<sup>1</sup> According to these reports, the incidents occurred in the City of Richmond (December 2006), Rockingham County (July 2007 and August 2007), and Prince William County (October 2007). Because the Rockingham county event in August 2007 involved repeated acts, prosecutors charged the perpetrator with stalking. The defendant later plead guilty to simple assault and was given a 12-month jail sentence, which the court suspended. Whether the offenders in the other instances were prosecuted in some manner is unknown.

According to available data, there have been no convictions in Virginia during a recent two-year period for similar acts of intimidation that are defined in existing *Code*. Based on calendar year (CY) 2006 and CY2007 Circuit Court Automated Information System (CAIS) data, there were no offenders

<sup>1</sup> DeLea, P. "Nooses Fuel Frustration," The Daily News Record, [http://www.dnronline.com/news\\_details.php?AID=31724&CHID=1](http://www.dnronline.com/news_details.php?AID=31724&CHID=1) (Retrieved February 17, 2009); "ADL Condemns Haymarket, Virginia Noose Hanging," Anti-Defamation League, <http://www.adl.org/NR/exeres/6DDD574D-944F-4CDE-A87B-DB30C6F38CBC.0B1623CA-D5A4-465D-A369-DF6E8679CD9E.frameless.htm> (Retrieved February 17, 2009); Nathan, D. "Black Worker Sues Verizon over Noose Incident," [http://news.findlaw.com/andrews/bt/tel/20081201/20081201\\_brown.html](http://news.findlaw.com/andrews/bt/tel/20081201/20081201_brown.html) (Retrieved February 17, 2009)

sentenced for intimidation by burning an object on private property or in a public place in violation of § 18.2-423.01, burning a cross in violation of § 18.2-423, or placing a swastika on a structure in violation of § 18.2-423.1.

At least four states (Connecticut, Louisiana, New York and North Carolina) are known to have specific laws banning the display of nooses, all of which were enacted in 2008. In both Louisiana and Connecticut, the offense is a misdemeanor punishable by incarceration of up to one year; in Connecticut, the crime can be elevated to a felony in the event of property damage of \$1,000 or more. Neither state was able to compute a fiscal impact for this legislation, although Connecticut considered the potential incarceration cost to be “minimal.” In New York, the offense is a felony punishable by up to four years in prison. New York estimated that the legislation would have zero fiscal impact on the state’s prison system. North Carolina amended an existing felony statute (relating to the placement of an exhibit with the intent to intimidate another) to explicitly include a noose. North Carolina determined that the legislation would have “minimal fiscal impact,” although the exact amount could not be determined.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Because the proposal creates two new felonies, it may increase the future state-responsible (prison) bed space needs of the Commonwealth. The potential impact of the proposal depends on the extent to which the offenders can be apprehended and convicted, and the extent that offenders will be given a prison sentence of one year or more. In the one case known to have resulted in a misdemeanor conviction for assault (Rockingham County, August 2007), the offender was not given an active sentence to serve. While the number of additional felony convictions that may result from the proposal cannot be quantified, the impact of the proposal on prison beds is likely to be small.

**Local adult correctional facilities.** Similarly, the proposal may increase the future local-responsible (jail) bed space needs of the Commonwealth. While the impact cannot be quantified, it is likely to be small.

**Adult community corrections programs.** By defining new felonies, the proposal may increase the need for state community corrections resources. Nonetheless, the impact is likely to be small.

**Virginia’s sentencing guidelines.** As new felonies, any conviction under the proposed § 18.2-423.2 would not be covered by the sentencing guidelines as the primary (most serious) offense at conviction. However, convictions under this statute may augment the guidelines recommendation if a covered offense is the most serious at conviction. No adjustment to the guidelines would be necessary under the proposal.

**Juvenile correctional centers.** According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

**Juvenile detention facilities.** According to the Department of Juvenile Justice, the impact of the proposal on the bed space needs of juvenile detention facilities cannot be determined.

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**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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**