



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 712

#### *Amendment in the Nature of a Substitute (Patron Prior to Substitute – Stuart)*

**LD#:** 13103958

**Date:** 1/21/2013

**Topic:** Hoax explosive devices and fake weapons of terror

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$47,685 (2 beds)
- **Local Adult Correctional Facilities:**  
None (\$0)
- **Adult Community Corrections Programs:**  
Cannot be determined, likely to be small

- **Juvenile Correctional Centers:**  
Cannot be determined, likely to be small
- **Juvenile Detention Facilities:**  
Cannot be determined, likely to be small

#### Summary of Proposed Legislation:

The proposal amends §§ 18.2-46.6 and 18.2-85 of the *Code of Virginia*, relating to the manufacture or use of fake weapons of terror or hoax explosive devices. The proposal amends § 18.2-46.6 to make it a Class 5 felony (punishable by imprisonment of one to ten years) for any person to possess, manufacture, or use any imitation weapon of terrorism with intent to intimidate. This offense is currently a Class 6 felony, punishable by imprisonment from one to five years. Similarly, the proposal amends § 18.2-85 to raise the penalty for constructing or using a hoax explosive device from a Class 6 felony to a Class 5 felony.

#### Analysis:

According to the Circuit Court Case Management System<sup>1</sup> for fiscal year (FY) 2011 and FY2012, two offenders were convicted under § 18.2-85 for the manufacture or use of hoax explosive devices as their primary (most serious) offense at sentencing. Both offenders did not receive an active term of incarceration to serve after sentencing. Also, three offenders were convicted under § 18.2-46.6 for using an imitation weapon of terrorism to intimidate; of these, one received probation without incarceration and the two remaining offenders were sentenced to state-responsible (prison) terms of two and four years, respectively.

Department of Juvenile Justice (DJJ) Court Service Units serve as the point of entry into the juvenile justice system. An “intake” occurs when a juvenile is brought before a court service unit officer for one or more alleged law violations. For the years 2010 to 2012, DJJ reports an average of one petitioned intake complaint and no commitments for these offenses.

<sup>1</sup> Formerly referred to as the Court Automated Information System (CAIS).

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By increasing the penalties for both offenses, the proposal is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. The increase is expected to be approximately two beds by FY2019. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$47,685.

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

FY14	FY15	FY16	FY17	FY18	FY19
0	1	1	1	2	2

**Local adult correctional facilities.** The proposal is not expected to affect the future need for local-responsible (jail) beds.

**Adult community corrections resources.** Raising the penalty for an offense from a Class 6 felony to a Class 5 felony permits a judge to order longer terms of supervised probation, which could increase the need for state community corrections resources. Although data are not available to estimate the net impact on community corrections resources, any impact is likely to be small.

**Virginia's sentencing guidelines.** Convictions under §§ 18.2-46.6 and 18.2-85 are not covered by the sentencing guidelines as the primary, or most serious, offense; however, they may augment the guidelines recommendation if the most serious offense at sentencing is covered. No adjustment to the guidelines would be necessary under the proposal.

**Juvenile correctional centers.** The Department of Juvenile Justice reports that the proposal will have a limited impact on bed space needs for juvenile correctional centers; however, the impact cannot be quantified.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal's impact on detention center bed space will be limited; however, the exact impact cannot be determined.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$47,685 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.**

**Assumptions underlying the analysis include:**

**General Assumptions**

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety's Committee on Inmate Forecasting in 2012.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety's Committee on Inmate Forecasting and approved in 2012.
3. Cost per prison bed was assumed to be \$29,081 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 FY2011 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.21 per day or \$10,304 per year. The local cost was calculated by using the daily expenditure cost of \$74.07 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 \$40.96 per day or \$14,961 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 sentencing and time served**

1. The impact of the proposed legislation, which would be effective on July 1, 2013, is phased in to account for case processing time.

2. The state-responsible 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 the Department of Corrections' facilities were earning sentence credits as of December 31, 2011. For offenses involving arson, this rate was 10.0%.
3. It was assumed that prosecutors would charge all eligible offenders under the proposed felony provision.
4. To gauge the impact on sentencing, it was assumed that the distribution of sentences for the affected cases will be similar to the distribution of sentences under the existing Class 5 felony provision for the manufacture or possession of a fire bomb or explosive material under § 18.2-85.

**Limitations**

1. The Circuit Court Case Management System excludes cases from Fairfax, Alexandria, or Virginia Beach.

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