



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 628

(Patron – Locke)

LD#: 16103454

Date: 1/11/2016

Topic: Threat of death or bodily injury

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
At least \$227,666 (7 beds)
- **Local Adult Correctional Facilities:**  
At least \$5,022 (less than 1 bed)
- **Adult Community Corrections Programs:**  
Cannot be determined

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

\* Provided by the Department of Juvenile Justice

#### Summary of Proposed Legislation:

Currently, under § 18.2-60, communicating a threat to kill or do bodily injury in writing or by other visual representation to a person or his family is a Class 6 felony if it reasonably causes a person to fear death or bodily injury. If the threat is made with the intent to commit an act of terrorism, the penalty is increased to a Class 5 felony. In addition, making threats in writing to kill or do bodily harm on school premises, on a school bus, or at school sponsored activities is a Class 6 felony, regardless of whether the victim is placed in reasonable apprehension of death or bodily harm. Orally communicating a threat to kill or cause bodily injury to a school employee while on school premises, on a school bus, or at school-sponsored activities is a Class 1 misdemeanor under § 18.2-60(B).

The proposal would remove the requirement that a threat of bodily injury or death be made in writing in order to obtain a felony conviction under § 18.2-60(A). In addition, the proposal removes the Class 1 misdemeanor for oral threats to a school employee because this behavior would likely be covered under the expanded felony provisions. Essentially, oral threats to a school employee would be elevated from a Class 1 misdemeanor to a Class 6 felony. Making threats with the intent to commit an act of terrorism would remain a Class 5 felony.

The proposal may overlap with the existing Class 5 felony in § 18.2-83, which prohibits the communication (by any means) of a threat to bomb, burn, or destroy in any manner any structure or any means of transportation.

#### Analysis:

According to the fiscal year (FY) 2014 and FY2015 Circuit Court Case Management System (CMS) database, 43 offenders were convicted of a Class 6 felony for communicating a threat in writing under § 18.2-60. Of these offenders, 62.8% received a state-responsible (prison) term, with the median sentence being 1.8 years. An additional 20.9% were sentenced to local-responsible (jail) terms, and the median

sentence for these offenders was six months. The remaining 16.3% were not sentenced to an active term of incarceration to serve after sentencing. The data also indicate that there were no convictions for a Class 5 felony under § 18.2-60 during this time period.

General District Court CMS data for FY2014 and FY2015 reveal that 14 offenders were convicted of a misdemeanor for communicating an oral threat to a school employee under § 18.2-60. Of these 14, 28.6% were sentenced to a local-responsible (jail) term with a median sentence of 45 days. The remaining 71.4% of these offenders did not receive an active term of incarceration to serve after sentencing.

---

### Impact of Proposed Legislation:

**State adult correctional facilities.** By expanding the types of threats that are covered as felonies under § 18.2-60, the proposal is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. While existing data sources do not contain sufficient detail to identify all cases that would be affected by the proposal, the number of convictions for oral threats to a school employee is available. The impact on state-responsible (prison) beds is estimated to be at least 7 beds by FY2022. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$227,666.

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

FY17	FY18	FY19	FY20	FY21	FY22
3	6	7	7	7	7

**Local adult correctional facilities.** The proposal is also expected to increase the future need for local-responsible (jail) beds. The impact on local-responsible (jail) beds is estimated to be less than one bed by FY2022 (state costs: at least \$5,022; local costs: at least \$7,382).

**Adult community corrections resources.** Because the proposal raises oral communication of a threat to a school employee from a Class 1 misdemeanor to a felony and expands the applicability of felony provisions in § 18.2-60, it may decrease the demand for local community-based probation services and increase the need for state community corrections resources. The *Code of Virginia*, however, allows judges to utilize local community-based probation programs for Class 5 and Class 6 felons as well as misdemeanants. Data are not available to estimate the net impact on local or state community corrections resources that may result from the proposal.

**Virginia's sentencing guidelines.** The sentencing guidelines cover Class 6 felony violations of § 18.2-60(A)(1) that are processed in Virginia's circuit courts. The guidelines do not cover Class 5 felony violations under § 18.2-60(A)(1) or felony violations under § 18.2-60(A)(2) as the primary, or most serious, offense; however, convictions under these provisions may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. 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.** The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

---

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$227,666 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 2015.
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 2015.
3. Cost per prison bed was assumed to be \$31,406 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 FY2014 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$30.57 per day or \$11,166 per year. The local cost was calculated by using the daily expenditure cost of \$78.53 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 \$44.93 per day or \$16,411 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 offenders**

1. Eligible offenders were identified as those whose primary offense was a misdemeanor conviction under § 18.2-60(B) for communicating an oral threat to a school employee in general district or circuit court. Existing data sources do not contain sufficient detail to identify other cases that would be affected by the proposal.
2. It was assumed that prosecutors would charge all eligible offenders under the enhanced felony provisions.

**Assumptions relating to sentencing**

1. The impact of the proposed legislation, which would be effective on July 1, 2016, is phased in to account for case processing time.
2. 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 for cases subject to the existing Class 6 felony penalty for communicating a threat of death or bodily injury in writing or by other visual representation under § 18.2-60.
3. 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 Department of Corrections' facilities were earning sentence credits as of December 31, 2014. For person crimes offenses, this rate was 8.8%.

**Limitations**

1. The Circuit Court Case Management System does not include cases from Fairfax or Alexandria. Although Virginia Beach left the system in FY2009, it rejoined the system in October 2014.

threat04\_3454