



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1791

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

LD#: 17105318

Date: 2/9/2017

Topic: Conspiracy or incitement to riot

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Programs:**
None (\$0)

- **Juvenile Direct Care:**
Cannot be determined *
- **Juvenile Detention Facilities:**
Cannot be determined *

* Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposal modifies § 18.2-408 of the *Code of Virginia* to increase the penalty for conspiring to cause or produce a riot or directing or inciting others who participate in a riot to acts of force or violence if certain conditions are met. Currently, a violation of this statute is a Class 5 felony, which is punishable by imprisonment up to 10 years. Under the proposal, the penalty would be raised to a Class 3 felony, punishable by up to 20 years imprisonment, if an individual conspires to cause a riot or incites participants to an act of force or violence against a law-enforcement officer, firefighter, emergency medical services personnel, or a member of the Virginia National Guard or Virginia Defense Force. The proposal also removes the term 'solicits' from § 18.2-408.

Analysis:

According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2011 through FY2016, there were two felony convictions under § 18.2-408 for conspiring to cause or inciting, etc., a riot. Both of these offenders received local-responsible (jail) sentences of six months.

Existing databases do not provide sufficient detail to determine the number of cases that would be affected by the proposal.

Impact of Proposed Legislation:

State adult correctional facilities. The proposed legislation would increase the penalty for conspiring to cause a riot or inciting participants to acts of force or violence from a Class 5 felony to a Class 3 felony if it is against a law-enforcement officer, firefighter, emergency medical services personnel, or a member of

the Virginia National Guard or Virginia Defense Force. However, during the most recent six-year period, none of the offenders convicted of a Class 5 felony under § 18.2-408 received a state-responsible (prison) sentence. Therefore, the proposal is not expected to have an impact on the prison bed space needs of the Commonwealth during the six-year projection window specified by § 30-19.1:4 for legislative impact statements.

Local adult correctional facilities. Since judges currently have the option to sentence an individual convicted of a felony for conspiring to cause or inciting, etc., a riot to a local adult correctional facility (jail), raising the penalty for this offense from a Class 5 felony to a Class 3 felony is not expected to increase local-responsible (jail) bed space needs.

Adult community corrections resources. Similarly, the proposal is not expected to increase the need for adult community corrections resources within the six-year projection window specified by § 30-19.1:4 for legislative impact statements.

Virginia's sentencing guidelines. The sentencing guidelines do not cover violations of § 18.2-408 when this offense is the primary, or most serious, offense in a case. However, convictions under this statute 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 direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) 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 \$0 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.

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