

19100503D

HOUSE BILL NO. 1991

Offered January 9, 2019

Prefiled January 7, 2019

A *BILL to amend and reenact § 18.2-46.5 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 4 of Title 18.2 an article numbered 2.3, consisting of sections numbered 18.2-46.11 through 18.2-46.16, relating to domestic terrorism offenses; penalty.*

Patrons—Price, Bagby, Bourne, Hope, Levine, Plum and Simon

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-46.5 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 4 of Title 18.2 an article numbered 2.3, consisting of sections numbered 18.2-46.11 through 18.2-46.16, as follows:

Article 2.3.

Domestic Terrorism Offenses.

§ 18.2-46.11. Definitions.

As used in this article, unless the context requires otherwise:

"Act of domestic terrorism" means an act of violence as defined in § 19.2-297.1 or any violation of § 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-56.1, 18.2-57, 18.2-83, 18.2-108.1, 18.2-121, 18.2-127, 18.2-128, 18.2-138, 18.2-146, 18.2-147, 18.2-186.4, 18.2-279, 18.2-282, 18.2-282.1, 18.2-287.4, 18.2-289, 18.2-300, 18.2-308.1, 18.2-308.2, 18.2-308.2:01, 18.2-312, 18.2-423, 18.2-423.01, 18.2-423.1, or 18.2-423.2 (i) committed against a person or the person's property with the intent of instilling fear or intimidation in the person against whom the act is perpetrated on the basis of race, religion, ethnicity, national origin, gender, sexual orientation, gender identity, or disability or (ii) committed against such person for the purpose of restraining the person from exercising that person's rights under the Constitution or laws of the Commonwealth or of the United States.

"Domestic terrorist organization" means any organization, association, or group of three or more persons, whether formal or informal, that has an identifiable name or identifying sign or symbol and (i) that has as one of its primary objectives or activities an act of domestic terrorism or (ii) whose members individually or collectively have been convicted of engaging in the commission of, attempt to commit, conspiracy to commit, or solicitation of two or more acts of domestic terrorism, provided that such acts were not part of a common act or transaction.

§ 18.2-46.12. Designation of domestic terrorist organizations.

A. The Superintendent of State Police (the Superintendent) shall promulgate regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), creating a procedure and establishing criteria for identifying domestic terrorist organizations and determining whether a particular organization, group, or association constitutes or is part of a domestic terrorist organization. Such regulations shall ensure an opportunity for a potentially affected organization, group, or association to present evidence why it should not be designated as a domestic terrorist organization or be considered part of a particular domestic terrorist organization before any designation becomes effective.

B. A designation under this section shall be effective for all purposes until revoked or set aside pursuant to subsection C or D.

C. Any organization, group, or association that has been designated as a domestic terrorist organization pursuant to subsection A may seek judicial review of the final agency order or decision in the Circuit Court for the City of Richmond in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). The commencement of a proceeding for judicial review under this subsection shall not, unless specifically ordered by the court, operate as a stay of the designation while such judicial review is pending.

D. Any organization, group, or association that has been designated as a domestic terrorist organization pursuant to subsection A shall have the annual right to petition the Superintendent for revocation of the designation. The Superintendent shall revoke the designation if the Superintendent finds that the circumstances that were the basis for the designation have changed in such a manner as to warrant revocation. The Superintendent's revocation decision is subject to judicial review in accordance with subsection C.

§ 18.2-46.13. Prohibited domestic terrorist organization participation; penalty.

A. Any person who actively participates in or is a member of a domestic terrorist organization, as designated by the Superintendent of State Police pursuant to § 18.2-46.12, and who knowingly and

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59 willfully participates in any act of domestic terrorism committed for the benefit of, at the direction of, or
60 in association with any domestic terrorist organization is guilty of a Class 5 felony.

61 B. Violation of this section shall constitute a separate and distinct offense. If the acts or activities
62 violating this section also violate another provision of law, a prosecution under this section shall not
63 prohibit or bar any prosecution or proceeding under such other provision or the imposition of any
64 penalties provided for thereby.

65 **§ 18.2-46.14. Prohibition on providing material support to a domestic terrorist organization.**

66 A. Whenever it appears to the Attorney General that any person is engaged in, or is about to engage
67 in, any act that constitutes, or would constitute, a violation of this article, the Attorney General may
68 initiate a civil action in a circuit court to enjoin such violation.

69 B. In addition to any other criminal, civil, or administrative liability or penalty, if it can be shown
70 by a preponderance of the evidence that a person provided material support or resources in connection
71 with an act of domestic terrorism, such person shall be subject to civil liability in an action brought by
72 an individual directly affected by the act of domestic terrorism.

73 C. Nothing in this section shall be construed or applied so as to abridge the exercise of rights
74 guaranteed under the First Amendment to the Constitution of the United States or Article I, Section 12
75 of the Constitution of Virginia.

76 **§ 18.2-46.15. Civil liability for acts of domestic terrorism.**

77 No provisions of this article shall be construed to relieve any member of a domestic terrorist
78 organization, as designated by the Superintendent of State Police pursuant to § 18.2-46.12, from civil
79 liability for any act of domestic terrorism committed for the benefit of, at the direction of, or in
80 association with any domestic terrorist organization.

81 **§ 18.2-46.16. Local law-enforcement reporting of acts of domestic terrorism.**

82 State, county, and municipal law-enforcement agencies shall report to the Department of State Police
83 all acts of domestic terrorism occurring in their jurisdictions in a form, time, and manner prescribed by
84 the Superintendent of State Police (the Superintendent). Such reports shall not be open to public
85 inspection except insofar as the Superintendent permits.

86 **§ 18.2-46.5. Committing, conspiring, and aiding and abetting acts of terrorism prohibited;**
87 **penalty.**

88 A. Any person who commits ~~or~~, conspires to commit, or aids and abets the commission of an act of
89 terrorism, as defined in § 18.2-46.4, is guilty of a Class 2 felony if the base offense of such act of
90 terrorism may be punished by life imprisonment, or a term of imprisonment of not less than ~~twenty~~ 20
91 years.

92 B. Any person who commits, conspires to commit, or aids and abets the commission of an act of
93 terrorism, as defined in § 18.2-46.4, is guilty of a Class 3 felony if the maximum penalty for the base
94 offense of such act of terrorism is a term of imprisonment or incarceration in jail of less than ~~twenty~~ 20
95 years.

96 C. Any person who solicits, invites, recruits, encourages, or otherwise causes or attempts to cause
97 another to participate in an act or acts of terrorism, as defined in § 18.2-46.4, is guilty of a Class 4
98 felony.

99 D. Any person who knowingly provides any material support (i) to an individual or organization
100 whose primary objective is to commit an act of terrorism *or to a domestic terrorist organization*
101 *designated as such pursuant to § 18.2-46.12* and (ii) does so with the intent to further such individual's
102 or organization's objective is guilty of a Class 3 felony. If the death of any person results from
103 providing any material support, then the person who provided such material support is guilty of a Class
104 2 felony.

105 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
106 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
107 **necessary appropriation cannot be determined for periods of imprisonment in state adult**
108 **correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2018, Special Session I,**
109 **requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of**
110 **\$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
111 **appropriation cannot be determined for periods of commitment to the custody of the Department**
112 **of Juvenile Justice.**