



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 2619

(Patron – Miyares)

LD#: 19103698

Date: 01/09/2019

Topic: Threats of death or bodily harm on school property

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$139,052 (4 beds)
- **Local Adult Correctional Facilities:**  
\$16,322 (1bed)
- **Adult Community Corrections Programs:**  
Cannot be determined

- **Juvenile Direct Care:**  
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(A)(2), making threats in writing (including an electronically transmitted communication) 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 include orally communicated threats to kill or do bodily harm to a school employee on school property, on a school bus, or at a school activity (currently as punishable as a Class 1 misdemeanor) as conduct subject to the Class 6 felony under § 18.2-60(A)(2).

#### Analysis:

According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2017 and FY2018, two offenders were convicted of a Class 6 felony for communicating a threat in writing on school property under § 18.2-60(A)(2). This was the primary, or most serious, offense for both offenders. One offender was sentenced to serve six months in jail and the other was sentenced to one year in prison.

General District Court CMS data for FY2017 and FY2018 revealed that 17 offenders were convicted of a misdemeanor for communicating an oral threat to a school employee under § 18.2-60(B). Of these 17, 52.9% were sentenced to a local-responsible (jail) term with a median sentence of 41 days. The remaining 47.1% of these offenders did not receive an active term of incarceration to serve after sentencing.

The Sentencing Commission does not have access to data associated with juveniles adjudicated in Juvenile and Domestic Relations Court.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By expanding the types of threats that are covered as a felony under § 18.2-60 (A)(2), the proposal is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. The impact on state-responsible (prison) beds is estimated to be four beds by FY2025. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$139,052.

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

FY20	FY21	FY22	FY23	FY24	FY25
3	4	4	4	4	4

**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 one bed by FY2025 (state costs: \$16,322; local costs: \$23,898).

**Estimated Six-Year Impact in Local-Responsible (Jail) Beds**

FY20	FY21	FY22	FY23	FY24	FY25
1	1	1	1	1	1

**Adult community corrections programs.** Because the proposal raises oral communication of a threat to a school employee from a Class 1 misdemeanor to a Class 6 felony, thus expanding the applicability of felony provisions under § 18.2-60(A)(2), 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 guidelines do not cover a Class 6 felony violation under § 18.2-60(A)(2) as the primary, or most serious, offense; however, convictions under this provision 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.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$139,052 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 2018.
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 2018.

3. Cost per prison bed was assumed to be \$35,053 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 FY2017 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$33.83 per day or \$12,356 per year. The local cost was calculated by using the daily expenditure cost of \$85.98 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 \$49.53 per day or \$18,091 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.
2. It was assumed that prosecutors would charge all eligible offenders under the enhanced felony provision.

**Assumptions relating to sentencing**

1. The impact of the proposed legislation, which would be effective on July 1, 2019, 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 harm in writing or by other visual representation on school property under § 18.2-60(A)(2).
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, 2017. For person crimes offenses, this rate was 8.2%.

**Limitations**

1. The Circuit Court Case Management System does not include cases from Fairfax or Alexandria.

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