

## **Department of Planning and Budget**

### **2021 Fiscal Impact Statement**

**1. Bill Number:** HB1782

**House of Origin**    ☒ Introduced    ☐ Substitute    ☐ Engrossed  
**Second House**    ☐ In Committee    ☐ Substitute    ☐ Enrolled

**2. Patron:** Carter

**3. Committee:** Courts of Justice

**4. Title:** Wearing masks during commission of a crime or acts of intimidation or harassment; penalty.

**5. Summary:** Under current law, with certain exceptions, it is unlawful for any person over 16 years of age to, with the intent to conceal his identity, wear any mask, hood, or other device whereby a substantial portion of the face is hidden or covered so as to conceal the identity of the wearer, to be or appear in any public place, or upon any private property in this Commonwealth without first having obtained from the owner or tenant thereof consent to do so in writing. Violation of this provision is punishable as a Class 6 felony.

This bill amends the prohibition on wearing a mask, making it illegal for any person to, with the intent to conceal his identity, wear any mask, hood, or other device whereby a substantial portion of the face is hidden or covered so as to conceal the identity of the wearer while committing or attempting to commit (i) a crime or (ii) an act of intimidation or harassment against another person where such act is motivated by racial, religious, gender, disability, gender identity, sexual orientation, or ethnic animosity. This provision applies to any person, regardless of their age. Violation of this provision is punishable as a Class 1 misdemeanor.

**6. Budget Amendment Necessary:** No

**7. Fiscal Impact Estimates:** Preliminary. See Item 8 below.

**8. Fiscal Implications:** This bill specifies circumstances under which wearing a mask is illegal and reduces the charge for concealing one's identity as described in § 18.2-422 (Prohibition on wearing a mask while committing a crime or certain acts of harassment; penalty), from a Class 6 felony to a Class 1 misdemeanor.

According to FY2019 and FY2020 Sentencing Guidelines data, provided by the Virginia Criminal Sentencing Commission (VCSC), 90 offenders were convicted of a Class 6 felony for wearing a mask or hood in violation of § 18.2-422, during the two-year period. This charge was the primary, or most serious, offense in 7 cases. While 28.6 percent of these offenders did not receive an active term of incarceration to serve after sentencing, 42.8 percent were sentenced to local-responsible (jail) terms for which the median sentence length was 6.0 months. For the remaining 28.6 percent of offenders sentenced to serve a state-responsible (prison) term, the median sentence length was 3.6 years.

By reducing a Class 6 felony penalty to a Class 1 misdemeanor, the proposed legislation is expected to reduce the number of offenders who would be sentenced to terms in state prisons. Those offenders sentenced to active terms of incarceration would instead serve the sentence in local jails.

The potential savings associated with this bill depends on how many offenders would have been sentenced to a state-responsible term and where those offenders would ultimately serve their sentences. The cost of a bed in a DOC facility (prison) in FY2020 was \$38,688 as calculated by the Department of Planning and Budget. The Commonwealth pays localities \$12.00 a day for any state-responsible prisoner held in a local jail.

Potential savings would be offset by the costs incurred to house misdemeanants in jails. Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail and a fine of not more than \$2,500, either or both.

The Commonwealth currently pays the localities \$4.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail. It also funds a large portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2020), the estimated total state support for local jails averaged \$34.59 per inmate, per day in FY 2019.

**9. Specific Agency or Political Subdivisions Affected:** Department of Corrections, Local and regional jails, Department of Juvenile Justice, Courts, Commonwealth's Attorneys, Public Defenders Office

**10. Technical Amendment Necessary:** No

**11. Other Comments:** None