



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 2120 (Patron – Cline)

LD#: 15102302

Date: 12/18/2014

Topic: Acts of violence

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$50,000 \*
- **Local Adult Correctional Facilities:**  
Cannot be determined
- **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

\* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the 2014 Acts of Assembly, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

#### Summary of Proposed Legislation:

The proposal amends § 19.2-297.1, relating to acts of violence. Currently, under § 19.2-297.1, the term “act of violence” is comprised of a number of felony offenses listed in Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 of the *Code of Virginia*. The current definition includes first and second degree murder, voluntary manslaughter, mob-related felonies, felony kidnapping, any malicious felonious assault, malicious wounding, robbery, rape, forcible sodomy, and arson of an occupied structure. The proposal explicitly adds strangulation, a Class 6 felony defined in § 18.2-51.6, to this list.

Section 19.2-297.1 provides that any person convicted of an act of violence who was previously convicted of two or more separate acts of violence and has been at liberty between each conviction must be sentenced to life imprisonment. This penalty only applies if it is admitted, or found by the jury or judge, that the offender has been previously convicted of two or more acts of violence.

Several other sections of the *Code* reference the definition of an act of violence under § 19.2-297.1. Section 18.2-38, for instance, states that any collection of people assembled for the purpose and with the intention of committing an act of violence, as defined in § 19.2-297.1, is deemed a mob. Pursuant to § 18.2-42.1, every person composing a mob which commits an act of violence is guilty of that act of violence and is subject to the same penalty as the individual who actually committed the act. Section 19.2-297.1 is also included in the definition of “predicate criminal act” (§ 18.2-46.1) for the purposes of Virginia’s gang statutes. For example, under § 18.2-46.2, a criminal street gang member who knowingly participates in any predicate criminal act for the benefit of, or at the direction of, the gang is guilty of a Class 5 felony.

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**Analysis:**

According to data from the Circuit Court Case Management System for fiscal year (FY) 2013 and FY2014, a conviction under § 18.2-51.6 was the primary, or most serious, offense in 95 cases. Nearly half (46.3%) of these offenders received a local-responsible (jail) sentence, with a median sentence length of six months, while 22.1% did not receive an active term of incarceration to serve after sentencing. The remaining 31.6% were sentenced to a state-responsible (prison) term, with a median sentence of 1.9 years.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Currently, the definition of “acts of violence” in § 19.2-297.1 includes malicious felonious assault and malicious bodily wounding. It is unclear if all instances of strangulation under § 18.2-51.6 could be classified as malicious felonious assault, since the judge or jury trying the case is not required to determine if malice or an intent to maim, disfigure, disable, or kill was present in order to convict the defendant of strangulation in violation of § 18.2-51.6. The proposal would modify the definition of “acts of violence” under § 19.2-297.1 to explicitly include all convictions for strangulation under § 18.2-51.6. If there are circumstances involving strangulation that could not currently be classified as an “act of violence” under § 19.2-297.1, the proposal would expand this definition. As a result, the proposal may expand the applicability of existing felony provisions, including § 19.2-297.1, which states that offenders who are convicted of a third or subsequent act of violence shall be subject to a mandatory term of life, § 18.2-42.1, which allows for every person who is part of a mob which commits act of violence to be prosecuted for the act, and § 18.2-46.1, which defines “predicate criminal act” for gang offenses.

Existing databases do not provide sufficient detail to estimate the number of new felony convictions, or potentially longer sentences, that may result from enactment of the proposal. Therefore, the magnitude of the impact, if any, cannot be determined.

**Local adult correctional facilities.** If the proposal expands the definition of “acts of violence” in § 19.2-297.1 beyond its current scope, the proposal may also increase local-responsible (jail) bed space needs, since additional individuals may be subject to felony penalties. In addition, an expansion of the definition could increase the number of individuals charged with strangulation who are denied bail pursuant to § 19.2-120, which establishes a presumptive denial of bail for individuals who are charged with an act of violence in § 19.2-297.1. The magnitude of the impact on local-responsible (jail) bed space needs, if any, cannot be determined.

**Adult community corrections resources.** The impact of the proposal on community corrections resources cannot be determined.

**Virginia’s sentencing guidelines.** The sentencing guidelines do not cover violations of § 18.2-56.1 when this offense is the primary, or most serious, offense in a sentencing event. However, convictions for this crime 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 cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the 2014 Acts of Assembly, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.**

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

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