



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1601

(Patron – Price)

LD#: 18105609

Date: 01/23/2018

Topic: Domestic terrorism offenses

Fiscal Impact Summary:

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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 836 of the 2017 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal adds §§ 18.2-46.11 through 18.2-46.15, relating to domestic terrorism, to the *Code of Virginia*. The proposed § 18.2-46.11 defines domestic terrorism as an act of violence as defined in § 19.2-297.1 or any violation of several code sections listed in the proposal, that is committed against a person or his property with the intent of instilling fear or intimidation in the individual against whom the act is perpetrated because of race, religion, national origin, gender, sexual orientation, or disability, or that is committed against such person for the purpose of restraining that person from exercising his rights under the Constitution or laws of this Commonwealth or of the United States.

Under the proposed § 18.2-46.13, a person participating in an assembly of three or more members of a domestic terrorist organization with the intent of advancing some unlawful goal, mission, or purpose of the domestic terrorist organization would be guilty of a Class 1 misdemeanor. This offense is elevated to a Class 5 felony if the member carries a firearm or other deadly or dangerous weapon while participating in the assembly. Furthermore, under the proposed § 18.2-46.14, a person who actively participates in or is a member of a domestic terrorist organization and who knowingly and willfully participates in any act of domestic terrorism committed for the benefit of, at the direction of, or in association with any domestic terrorist organization would be guilty of a Class 5 felony. Violation of this proposed section would constitute a separate and distinct felony.

Finally, under the § 18.2-46.15(A), any person who has knowledge that an organization is designated as a domestic terrorist organization under § 18.2-46.13 and knowingly provides material support or resources to the organization, or attempts or conspires to do so, would be guilty of a Class 5 felony. This offense would be elevated to a Class 2 felony if the death of any person results. In addition, under the proposed § 18.2-46.15(B), any person who provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are

to be used in preparation for, or in carrying out, an act of domestic terrorism, or in the preparation for, or in carrying out, the concealment of an escape from the commission of any act of domestic terrorism, or attempts or conspires to do such an act would be guilty of a Class 5 felony. Similarly, this offense would be elevated to a Class 2 felony if a death results.

Analysis:

Existing data sources do not contain sufficient detail to identify the number of individuals who would be affected by the proposal. However, available data indicate the number of individuals convicted of violations of several of the *Code* sections listed in the proposal that are eligible to be considered acts of domestic terrorism. For example, fiscal year (FY) 2012 and FY2017 Sentencing Guidelines data show that 30 offenders were convicted under § 18.2-308.1(B) for possessing a firearm on school property, 403 individuals were convicted under § 18.2-137 for damaging or destroying personal property valued at \$1,000 or more, and 779 were convicted of the use of a firearm in commission of a felony under § 18.2-53.1.

General District Court Management System (CMS) data for FY2012 through FY2017 indicate a misdemeanor hate-crime assault § 18.2-57(A) was the primary, or most serious, offense at sentencing for 26 offenders, and Circuit Court CMS data for the same time period show that a felony hate crime assault and battery under § 18.2-57(B) was the primary offense for one offender. Furthermore, General District CMS data for FY2016 and FY2017 show that there were 8,364 convictions under § 18.2-119 for trespassing after being forbidden to do so, 13 misdemeanor convictions under § 18.2-287.4 for carrying a loaded firearm in certain localities, and 17 convictions under § 18.2-308.2:01(B) for possessing or transporting an assault firearm by a person not lawfully present in the United States. For the same time period, Circuit Court CMS data show that there was one offender convicted of burning a cross with the intent to intimidate under § 18.2-423.01.

It is unclear how many of these convictions would meet the definition of acts of domestic terrorism as defined in the proposal. However, individuals convicted of these offenses and the others listed in the proposed § 18.2-46.11 would be potentially eligible for the penalties stipulated in the proposal.

Impact of Proposed Legislation:

State adult correctional facilities. By establishing several new felonies that a violation of would be a separate and distinct offense, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. One of the proposed felonies would be in addition to the conviction for the underlying offense and, thus, could result in longer prison sentences for affected offenders. However, the number of additional felony convictions that may result from the proposal cannot be estimated; therefore, the magnitude of the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal may increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be determined.

Adult community corrections resources. Because the proposal could result in additional felony convictions and subsequent supervision requirements for additional offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be determined.

Virginia's sentencing guidelines. Convictions under the proposed §§ 18.2-46.11 through 18.2-46.15 would not be covered by the sentencing guidelines as the primary (most serious) offense. Such a conviction, however, could 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 cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 836 of the 2017 Acts of Assembly 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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