



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 1991 (Patrons – Price and Simon)

LD#: 19100503

Date: 10/16/2018

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 2 of the Acts of Assembly of 2018, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

#### Summary of Proposed Legislation:

The proposal expands § 18.2-46.5 and adds §§ 18.2-46.11 through 18.2-46.16, 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, ethnicity, national origin, gender, sexual orientation, gender orientation, gender identity, 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 who 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 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.

Additionally, the proposal would expand § 18.2-46.5, relating to committing, conspiring, and aiding and abetting acts of terrorism. Currently under § 18.2-46.5, any person who knowingly provides any material support (i) to an individual or organization whose primary objective is to commit an act of terrorism and (ii) does so with the intent to further such individual's or organization's objective is guilty of a Class 3 felony. This offense is elevated to a Class 2 felony if the death of any person results from providing such material support. Under the proposal, § 18.2-46.5 would be expanded to expressly prohibit giving material support to a domestic terrorist organization that is designated as such pursuant to the proposed § 18.2-46.12.

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**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, 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 FY2013 through FY2018 indicate a misdemeanor hate-crime assault under § 18.2-57(A) was the primary, or most serious, offense at sentencing for 23 offenders. The same data also indicate that there were 43 misdemeanor convictions under § 18.2-287.4 for carrying a loaded firearm in certain localities.

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, there were 30 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. It was the primary offense in 15 of the cases. Finally, there were no convictions for burning a cross with the intent to intimidate under § 18.2-423.01 during this time period.

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.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By establishing a new felony, violation of which would constitute a separate and distinct offense, and expanding an existing felony, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The proposed felony would be in addition to the conviction for the underlying offense and, thus, could result in longer prison sentences for offenders affected by this aspect of the proposal. The number of offenders who may be affected by 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.** The net impact on community corrections resources cannot be determined. Because the proposal could result in felony convictions and subsequent supervision requirements for additional offenders, the proposal may increase the need for adult community corrections resources. However, other offenders may receive longer terms of incarceration as a result of the proposal, which would delay the need for services as these individuals would serve longer in prison or jail prior to being released to the community.

**Virginia's sentencing guidelines.** Convictions under § 18.2-46.5 are not covered, and convictions under the proposed § 18.2-46.13 would not be covered, by the sentencing guidelines as the primary (most serious) offense. Such convictions, 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.

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**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 Acts of Assembly of 2018, 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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