



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2554 (Patron – Price)

LD#: 19103098

Date: 1/8/2019

Topic: Discretionary sentencing guidelines midpoints for domestic terrorism

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
None (\$0)

- **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 adds § 17.1-805.1 to the *Code of Virginia*, relating to sentencing guidelines midpoints. Under the proposal, the midpoint of the initial recommended sentencing range for defendants who commit acts of domestic terrorism, as defined in the proposal, would be increased by 200%. As proposed, an act of domestic terrorism includes a felony act of violence defined by § 19.2-297.1 (the same offenses defined by § 18.2-46.4 as acts of terrorism), plus certain felony offenses defined as violent by § 17.1-805 (i.e., §§ 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-57, 18.2-279, 18.2-282, 18.2-282.1, 18.2-289, 18.2-300, 18.2-308.1, 18.2-308.2, 18.2-312, 18.2-423, 18.2-423.01, 18.2-423.1 and 18.2-423.2). In addition, other felony offenses not currently defined by statute as violent acts are included in the proposal; these are § 18.2-56.1 (reckless handling of a firearm resulting in serious injury), § 18.2-83 (bomb threats), § 18.2-108.1 (receiving stolen firearm), § 18.2-121 (vandalism hate crime), § 18.2-127 (damage to church property), § 18.2-128 (trespass on school property with intent to abduct student), § 18.2-138 (damage public building \$1,000 or more), § 18.2-186.4 (publish name of law enforcement with intent to harass), § 18.2-287.4 (carry loaded firearm in certain localities - third or subsequent offense), § 18.2-308.1 (possess, but not use, firearm on school property), and § 18.2-308.2:01 (firearm possession by person not lawfully present in the United States).

In defining “domestic terrorism,” the proposal would expand upon the definition of terrorism in § 18.2-46.4¹ to include the specified acts committed with intent to coerce a civilian population, acts with intent to

¹ As defined in § 18.2-46.4, an “act of terrorism” means an act of violence as defined in clause (i) of subdivision A of § 19.2-297.1 or an act that would be an act of violence if committed within the Commonwealth committed within or outside the Commonwealth with the intent to (i) intimidate a civilian population at large or (ii) influence the conduct or activities of a government, including the government of the United States, a state, or a locality, through intimidation.

influence government policy by coercion, and acts with intent to disrupt the conduct or workings of government.

Legislation adopted by the General Assembly in 1994 provided the framework for Virginia's discretionary sentencing guidelines, which are used by circuit court judges in felony cases (§ 17.1-801 et seq.). While compliance with the guidelines is discretionary, the guidelines must be prepared and submitted to the court and reviewed by the judge prior to sentencing. Pursuant to § 17.1-803, the Commission is to develop, maintain and modify discretionary sentencing guidelines that take into account historical data, when available, concerning sentences imposed for felony offenses committed on or after January 1, 1995, and such other factors as may be deemed relevant to sentencing. In essence, the guidelines are designed to provide judges with a benchmark of the typical, or average, case outcome given the offense and the defendant's criminal history. Per § 17.1-805, individuals with current or prior convictions for violent felony offenses receive enhancements on the guidelines that increase the recommended sentences for those offenders. The sentencing guidelines apply to nearly all felony convictions in Virginia; however, there are felonies currently not covered by the guidelines when the crime is the primary, or most serious, offense in the case (this may be due to recent enactment of the felony or relatively few convictions for the offense).

A number of offenses listed in the proposal currently are not covered by the guidelines. Guidelines are not applicable when such an offense is the most serious at sentencing.

Pursuant to § 18.2-46.5, acts of terrorism, as defined in § 18.2-46.4 are subject to enhanced penalties. Any person who commits or conspires to commit or aids and abets the commission of an act of terrorism is guilty of a Class 2 felony if the base offense of such act of terrorism is punishable by a term of imprisonment of 20 years or more. If the base offense is punishable by a term of imprisonment of less than 20 years, the person is guilty of a Class 3 felony. Per § 18.2-46.10, terrorism offenses may be charged as separate and distinct crimes from the underlying felonies. Sentencing guidelines do not cover terrorism convictions under § 18.2-46.5 if that is the most serious offense at sentencing.

Analysis:

Existing data sources do not contain sufficient information to estimate the number of incidents that could be defined as acts of domestic terrorism under the proposal.

If the proposal were to be enacted, the court must determine if the offender's conduct meets the criteria of domestic terrorism and clearly indicate such in the conviction order for the guidelines preparer to score the guidelines with the proposed enhancements. Prosecutors would have discretion as to how the case is presented in court and the elements included in plea agreements and proffers.

Because the proposal specifies a tripling of the initial recommended midpoint, the new guidelines recommendations may exceed statutory maximums in some cases, particularly if the defendant is also subject to existing enhancements, such as those specified for a violent prior record.

The proposal will require modification of sentencing guidelines worksheets. Fifteen of the 17 guidelines offense worksheets would be affected by the proposal. The scores on the revised worksheets would need to reflect the existing enhancements required by § 17.1-805 in addition to the proposed 200% enhancement for domestic terrorism. The proposal will require re-programming of the automated sentencing guidelines system (known as SWIFT), changes to paper guidelines forms, and significant revisions to guidelines manuals.

Judges comply with Virginia's discretionary guidelines in the majority of felony cases. In FY2018, the overall guidelines compliance rate was 82%; however, the compliance rate in midpoint enhancement cases was somewhat lower, at 73%.

Impact of Proposed Legislation:

State adult correctional facilities. Because it would increase sentencing guidelines recommendations for certain offenders and potentially result in longer sentences imposed by judges, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing databases do not provide sufficient detail to determine the number of affected offenders or the changes in sentencing patterns likely to result from enactment of the proposal. As a result, the magnitude of the impact on prison bed space needs cannot be quantified.

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 programs. The proposal is not expected to increase the need for community corrections resources and will delay the need for services for some offenders affected by the proposal, as they will serve longer incarceration terms prior to being released to the community.

Virginia's sentencing guidelines. The proposal will require re-programming of the automated sentencing guidelines system (known as SWIFT), changes to paper guidelines forms, and significant revisions to guidelines manuals. A number of offenses listed in the proposal currently are not covered by the guidelines when the offense is the most serious at sentencing. If required to include all offenses in the proposal, the Sentencing Commission would need to conduct special studies to collect data to develop historically-based guidelines for these offenses. If the number of convictions is insufficient for the development of historically-based guidelines, a decision will need to be made as to how to establish guidelines for those offenses in order to comply with the legislation.

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 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.

sg01_3098