



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1508 (Patron – Carrico)

LD #: 19100937

Date: 12/27/2018

Topic: Obstruction of justice

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 amends § 18.2-370 (taking indecent liberties with children) and § 18.2-460 (obstructing justice, resisting arrest, fleeing from a law-enforcement officer, etc.) to establish new penalties for certain offenses related to obstruction of justice.

Under the proposed modification to § 18.2-370, it is a Class 5 felony for any person with actual knowledge of a violation of (i) a person enticing a child to enter any vehicle, room, house, or other place for purpose of taking indecent liberties with such child or (ii) an abduction of a child under 16 for prostitution or child pornography to willfully conceal, alter, dismember, or destroy any item of physical evidence or knowingly and willfully make any materially false statement or representation to a law-enforcement officer with the intent to delay, impede, obstruct, prevent, or hinder the investigation, apprehension, prosecution, conviction, or punishment of any person regarding such offenses.

The proposal also modifies § 18.2-460 to make it a Class 1 misdemeanor for any person with knowledge of a felony offense to knowingly and willfully make any materially false statement or representation to a law-enforcement officer regarding the location or whereabouts of a person named in an active felony arrest warrant with the intent to delay, impede, etc., the investigation, apprehension, prosecution, conviction, or punishment of such person.

Currently, under § 18.2-460, it is a Class 1 misdemeanor to obstruct a judge, magistrate, justice, juror, attorney for the Commonwealth, witness, law enforcement officer, or animal control officer, or to attempt to intimidate or impede any such individual by threats or force. Any violation committed using threat of bodily harm or force in relation to certain drug, gang, or violent offenses is a Class 5 felony. Under § 18.2-462(B), it is a Class 6 felony for a person (other than the victim or a relative of the offender) with actual knowledge of a felony offense under Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 (Crimes Against

the Person) to willfully conceal, alter, dismember, or destroy any item of physical evidence with the intent to delay, impede, obstruct, prevent, or hinder the investigation, apprehension, prosecution, conviction, or punishment of any person regarding such offense.

Analysis:

Existing databases do not provide sufficient detail to identify the number of new misdemeanor and felony convictions likely to result from enactment of the proposal. However, affected individuals may be sentenced similarly to those who are currently convicted of a misdemeanor or felony for violations of related offenses.

According to General District Court Case Management System (CMS) data for fiscal year (FY) 2017 and FY2018, 4,663 offenders were convicted of a Class 1 misdemeanor under § 18.2-460 for obstruction of justice. Half (50.5%) of these offenders did not receive an active term of incarceration to serve after sentencing. For the remaining 49.5% who were sentenced to a local-responsible (jail) term, the median sentence was one month.

Circuit Court CMS data for FY2017 and FY2018 indicate that 80 offenders were convicted of a Class 5 felony under § 18.2-460(C) for obstruction of justice by threats of bodily harm or force or for obstruction of justice in relation to a violent felony offense or specified drug crime (in these cases, the obstruction charge was the primary, or most serious, offense at sentencing). Of these offenders, 42.5% received a local-responsible (jail) term with a median sentence of 4.5 months. Another 27.5% received a state-responsible (prison) term for which the median sentence was 2.1 years. The remaining 30.0% did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. By creating a new Class 5 felony under § 18.2-370, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, the number of additional felony convictions that may result from enactment of the proposal cannot be estimated. Therefore, the magnitude of the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, by creating a new felony and a new misdemeanor offense, the proposal may increase local-responsible (jail) bed space needs. However, the magnitude of the impact cannot be determined.

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

Virginia's sentencing guidelines. Convictions for the proposed felony would not be covered by the sentencing guidelines when the offense is the primary, or most serious, offense in a case. However, convictions under this statute 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 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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