



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 197

(Patron – Cosgrove)

LD#: 20103754

Date: 12/19/2019

Topic: Threats orally in person

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 854 of the 2019 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

Currently, under § 18.2-60, communicating a threat to kill or do bodily injury in writing or by other visual representation to a person or a member of that person's family is a Class 6 felony if it places the person in reasonable fear of death or bodily injury to himself or a family member. The penalty is the same if the threat is made on school grounds, at a school event or on a school bus, and whether or not the object of the threat is aware of it, so long as the threat would put him in reasonable fear of death or harm. Oral threats to any school employee or health care worker while performing assigned duties is punishable as a Class 1 misdemeanor. If a threat is made with the intent to commit an act of terrorism, the penalty is increased to a Class 5 felony.

The proposal would add threats made orally in person to § 18.2-60(A) so that any person who orally makes a threat to kill or do bodily injury to a person, regarding that person or any member of that person's family, and the threat places the person in reasonable apprehension of death or bodily injury to himself or his family member would be guilty of a Class 6 felony. Oral threats made to any employee of a school while on school property or a bus and any health care worker engaged in the performance of assigned duties is defined by § 18.2-60(B) as a Class 1 misdemeanor.

Analysis:

According to the fiscal year (FY) 2018 and FY2019 Sentencing Guidelines database, 86 offenders were convicted of a Class 6 felony for communicating a threat in writing under § 18.2-60. In 68 cases, this was the primary (most serious) offense in the sentencing event. Of these offenders, 45.6% received a state-responsible (prison) term, with the median sentence being 1.4 years. An additional 36.8% were given local-responsible (jail) terms, and the median sentence for these offenders was six months. The

remaining 17.6% were not sentenced to an active term of incarceration to serve after sentencing. Circuit Court Case Management System (CMS) data for the same two year period indicated that there was one conviction for the existing Class 5 felony under § 18.2-60 during this time; this offender was sentenced to serve one year in prison.

General District Court CMS data for FY2018 and FY2019 indicate that 14 offenders were convicted of misdemeanor oral threats made on school property or to school staff. Of these, six offenders (43%) were sentenced to serve jail terms with a median sentence of less than a month (26 days). The remaining eight offenders (57%) did not receive an active term of incarceration to serve after sentencing. No convictions for threats to health care providers were identified. Other oral threats may have been prosecuted using the general assault statute under § 18.2-57, but that level of detail is not available from current sources.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding existing statutes to cover oral threats, and in some cases increasing misdemeanors to felonies, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, available data do not provide sufficient detail to estimate the number of new felony convictions that may result from enactment of the proposal. Therefore, the magnitude of the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal may also 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. Class 6 felony convictions under § 18.2-60(A,1) would continue to be covered by the sentencing guidelines when the crime is the primary (most serious) offense. The remaining felonies, as defined by the amendment, would not be covered by sentencing guidelines. A conviction for such offenses, 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 854 of the 2019 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.