

**Department of Planning and Budget**  
**2020 Special Session I - Fiscal Impact Statement**

**1. Bill Number:** HB5029

House of Origin	<input checked="" type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Enrolled

**2. Patron:** McQuinn

**3. Committee:** House Committee for Courts of Justice

**4. Title:** Law-enforcement officer; failure to intervene in an unlawful use of force; penalties.

**5. Summary:** The proposed legislation requires that any law-enforcement officer who witnesses another law-enforcement officer engaging or attempting to engage in the unlawful use of force against another person shall intervene, when such intervention is objectively reasonable and possible, to end the unlawful use or attempted unlawful use of force, or to prevent the further unlawful use of force. It also requires a law-enforcement officer to render aid, as circumstances objectively permit, to any person injured as the result of such unlawful use of force. Further, the proposed legislation states that the knowing failure to intervene in the unlawful use of non-deadly force is punishable as a Class 1 misdemeanor and the knowing failure to intervene in the unlawful use of deadly force is punishable as a Class 6 felony. The proposed legislation also punishes the knowing failure to intervene in the unlawful use of force that leads to death or if the victim is thereby severely injured and is caused to suffer permanent and significant physical impairment as a Class 4 felony.

**6. Budget Amendment Necessary:** Yes, Item 402.

**7. Fiscal Impact Estimates:** Preliminary (see Item 8 below).

**8. Fiscal Implications:** Existing data are insufficient to determine how many additional felony convictions may result if the proposal is enacted. However, individuals convicted under the proposed provision may be sentenced similarly to those convicted under § 18.2-19 for being an accessory to a crime after the fact.

According to Circuit Court Case Management System (CMS) data, obtained by the Virginia Criminal Sentencing Commission for fiscal year (FY) 2018 and FY2019, 205 offenders were convicted under § 18.2-19 for being an accessory after the fact. This was the primary, or most serious offense, for 167 of the offenders.

Of the 167 offenders, 155 were convicted in Circuit Court of a Class 1 misdemeanor for being an accessory after the fact to a felony offense other than capital or first-degree murder. For this Class 1 misdemeanor, 43.2% of the offenders received jail term with a median sentence of two months; the remaining offenders did not receive an active term to serve after sentencing. Another 12 offenders were convicted of a Class 6 felony for being an accessory

after the fact to murder. The majority of these offenders (83%) received prison term for which the median sentence was 1.7 years.

General District Court CMS data for FY2018-FY2019 indicate that an additional 143 offenders were convicted of a Class 1 misdemeanor in the lower courts for being an accessory after the fact (§ 18.2-19). For the 46.2% given a jail term, the median sentence was two months.

The proposed legislation creates a new felony and, therefore, the bill may increase future state prison bed needs in the Commonwealth. However, available data is not sufficient to estimate the number of cases under the proposed legislation or estimate the overall impact. Accordingly, the magnitude of the impact on prison bed space cannot be determined at this time.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 1289, 2020 Acts of Assembly, requires that a minimum impact of \$50,000 be assigned to the bill.

Any potential fiscal impact on local and regional jails or the Department of Juvenile Justice (DJJ) is indeterminate at this time.

The proposed legislation may also increase the local-responsible jail bed space needs, however the extent of the impact cannot be determined at this time using existing data. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail and \$12.00 a day for each state-responsible prisoner. It also funds a considerable portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2019), the estimated total state support for local jails averaged \$34.07 per inmate, per day in FY 2018.

The fiscal impact on law enforcement agencies cannot be determined at this time.

**9. Specific Agency or Political Subdivisions Affected:** Department of Corrections, local law-enforcement agencies, Office of Public Defender, Courts, local jails, Commonwealth's Attorneys.

**10. Technical Amendment Necessary:** None.

**11. Other Comments:** No.