



## **Fiscal Impact Statement for Proposed Legislation**

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### ***Virginia Criminal Sentencing Commission***

#### **House Bill No. 5029** **Amendment in the Nature of a Substitute** ***(Patron Prior to Substitute –McQuinn)***

**LD#:** 20201020

**Date:** 08/27/2020

**Topic:** Failure to intervene in the use of excessive or deadly force

#### **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 1289 of the Acts of Assembly of 2020 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

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#### **Summary of Proposed Legislation:**

The proposal would add § 18.2-57.5 to the *Code* to require a law enforcement officer to intervene if he witnesses another officer engaging or attempting to engage in the use of excessive force, and such intervention is objectively reasonable and possible to end or prevent the use of excessive force.

Under the proposal, the knowing failure to intervene in the use of non-deadly excessive force would be a Class 1 misdemeanor, while the knowing failure to intervene in the use of deadly force would be a Class 6 felony. The penalty for failing to intervene would increase to a Class 4 felony if the use of excessive or deadly force results in death or injury with permanent and significant impairment of the victim.

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#### **Analysis:**

Available 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 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 a local-responsible

(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 a state-responsible (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.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Because it creates new felony offenses for which imprisonment is authorized, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing data do not provide sufficient detail to estimate the number of new felony convictions that would result from enactment of the proposal. Therefore, the impact on prison bed space needs cannot be determined.

**Local adult correctional facilities.** Similarly, the proposal may increase the local-responsible (jail) bed space needs; however, the magnitude of the impact on jail bed space needs cannot be estimated with existing data.

**Adult community corrections programs.** 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. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections cannot be quantified.

**Virginia's sentencing guidelines.** Convictions under the proposed § 18.2-57.5 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.

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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 1289 of the Acts of Assembly of 2020 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.**