



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 5030 **Amendment in the Nature of a Substitute** ***(Patrons Prior to Substitute –Locke, Norment, et al.)***

LD#: 20201240

Date: 09/23/2020

Topic: Policing practices

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:**
None (\$0) **
- **Juvenile Detention Facilities:**
None (\$0) **

**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.

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.

The proposal also amends § 18.2-64.2 to add law-enforcement officers to the list of persons who are subject to a Class 6 felony if they are in a position of authority over and carnally know without force, threat, or intimidation any person detained by a law-enforcement officer or an inmate, parolee, probationer, juvenile detainee, pretrial defendant or posttrial offender. In addition, the proposal adds individuals in the custody of a law enforcement agency to the list of persons against whom carnal knowledge would be unlawful. Currently, the Class 6 felony defined in § 18.2-64.2 only includes the carnal knowledge of an inmate, parolee, probationer, detainee, pretrial defendant or posttrial offender by certain corrections or probation officials.

In addition, the proposal amends § 18.2-312 to eliminate exceptions allowing use of tear gas or other gases for a) police officers in performance of their official duties and b) any person in the protection of person, life, or property. It adds § 18.2-312(B), which provides that law enforcement officers may use crowd control measures that are not prohibited for use by military forces under the Convention on the

Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction and may use tear gas if certain conditions are met. The proposal also specifies that in addition to any other penalty authorized by law, a violation of § 18.2-312(B) is grounds for disciplinary action against the law-enforcement officer, including dismissal, demotion, suspension, or transfer of the law-enforcement officer.

Finally, the proposal amends and adds numerous sections to the *Code* related to law enforcement training standards, police tactics, decertification of officers, publicly-available data, and military property.

Analysis:

Available data are insufficient to determine how many additional felony convictions may result if the proposal is enacted.

Individuals convicted under the proposed § 18.2-57.5 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.

Individuals convicted as a result of the proposed changes to § 18.2-64.2 may be sentenced similarly to those currently convicted under this provision. According to FY2014-FY2019 Circuit Court CMS data, 23 offenders were convicted of felony carnal knowledge of an inmate, etc., under § 18.2-64.2 as the primary (or most serious) offense. While 56.5% of these offenders did not receive an active term of incarceration to serve after sentencing, 34.8% of the offenders were sentenced to local-responsible (jail) terms with a median sentence of 4.5 months. The remaining two offenders (8.7%) were sentenced to state-responsible (prison) terms of 1.3 years and 1.5 years, respectively.

Individuals convicted as a result of the proposed changes to § 18.2-312 may be sentenced similarly to those convicted under the existing statute. According to FY2014-FY2019 Circuit Court CMS data, eight offenders were convicted under § 18.2-312 for illegal use of tear gas or some other gas. This was the primary, or most serious offense, for only three of the offenders. Of these, two offenders were convicted of a Class 3 felony for maliciously releasing such a gas; these individuals received sentences 12 months and 6 years, respectively. The third offender was convicted of a Class 6 felony for releasing a gas unlawfully, but not maliciously; this individual was given probation without an active term of incarceration to serve.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal creates new felony offenses and expands the potential applicability of existing felonies. As a result, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not provide sufficient detail to determine the number of additional felony convictions that may result from the proposal. For this reason, the impact of the proposal on prison bed space needs cannot be determined.

Local adult correctional facilities. 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. Furthermore, convictions under § 18.2-64.2 and § 18.2-312 are not covered by the sentencing guidelines as the primary offense. However, convictions under these provisions 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 proposal is not expected to impact direct care (juvenile correctional center or alternative commitment placement) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to impact the bed space needs of juvenile detention facilities.

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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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