

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

1. Bill Number: SB5053S1

House of Origin ☐ Introduced ☒ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Reeves

3. Committee: Senate Finance and Appropriations

4. Title: Burning cross on property of another or public place with intent to intimidate; penalty.

5. Summary: The proposed legislation amends §§ 18.2-423, 18.2-423.1 and 18.2-423.2 to increase the penalty for placing a burning cross, swastika, or noose on certain properties with the intent to intimidate another. Under the proposal, the penalty for such offenses would increase from a Class 6 to a Class 4 felony. The proposed legislation also would expand § 18.2-423.1 to include placing a swastika with the intent to intimidate on the property of another, any highway or any other public place. Currently, this provision is specific to placing a swastika on the property of a church, synagogue or other place of religious worship.

6. Budget Amendment Necessary: Yes, Item 402.

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

8. Fiscal Implications: According to the Virginia Criminal Sentencing Commission (VCSC), available data for fiscal year (FY) 2014 through FY2019, indicate that there was one felony conviction under § 18.2-423 for burning a cross with the intent to intimidate. This offense was the primary, or most serious offense, at sentencing. The offender did not receive an active term of incarceration to serve after sentencing. Additionally, the VCSC reports that Circuit Court CMS data indicate that there were no felony convictions for placing a swastika in violation of § 18.2-423.1 during this six-year period. Similarly, VCSC reports that Circuit Court CMS data for FY2014-FY2019 indicate that there were two felony convictions under § 18.2-423.2 for displaying a noose with the intent to intimidate. This offense was the primary, or most serious offense, in each case. The offenders were sentenced to local-responsible (jail) terms of two and six months, respectively.

The proposed legislation increases the penalty for three existing felonies and expands the applicability of one of those felonies, and therefore may increase the state-responsible (prison) bed space needs of 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 Commonwealth's Attorneys, Courts, Law-enforcement agencies, and other criminal justice agencies cannot be determined at this time.

9. Specific Agency or Political Subdivisions Affected: Department of Corrections, Courts, Commonwealth's Attorneys, Virginia Public Defender Offices, local correctional facilities.

10. Technical Amendment Necessary: No.

11. Other Comments: None.