



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 5053 **Amendment in the Nature of a Substitute** **(Patron Prior to Substitute – Reeves)**

LD#: 20200898

Date: 8/21/2020

Topic: Objects placed or displayed with intent to intimidate

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
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.

Summary of Proposed Legislation:

The proposal 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 bill 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.

Analysis:

According to Circuit Court Case Management System (CMS) data for fiscal year (FY) 2014 through FY2019, 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.

Based on Circuit Court CMS data, there were no felony convictions for placing a swastika in violation of § 18.2-423.1 during this six-year period.

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.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal increases the penalty for three existing felonies and expands the applicability of one of those felonies. The proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, existing data do not provide sufficient detail to estimate the number of new felony convictions that would result from the expanded applicability of an existing offense as proposed. 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. Since the number of new convictions that may result from enactment of the proposal cannot be determined, the magnitude of the impact on jail bed space needs cannot be estimated.

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 §§ 18.2-423, 18.2-423.1 and 18.2-423.2 are not covered by the sentencing guidelines when the offense is the primary, or most serious, offense in a case. However, such a conviction 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. According to the Department of Juvenile Justice, the impact of the proposal 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 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.

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