



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2132 Amendment in the Nature of a Substitute (Patron Prior to Substitute – Roem)

LD#: 21104105

Date: 02/01/2021

Topic: Defenses to murder, homicide and assault

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
None (\$0)

- **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.

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

Summary of Proposed Legislation:

The proposed legislation adds §§ 18.2-37.1 and 18.2-57.5 to the *Code of Virginia*, relating to possible defenses to murder, homicide and assault. The proposed legislation provides that the discovery of, perception of, or belief about another person's actual or perceived sex, gender, gender identity or sexual orientation is not a defense to any charge of capital murder, murder in the first degree, murder in the second degree, voluntary manslaughter or any assault and battery related crimes defined by Article 4 (i.e., §§ 18.2-51 through 18.2-57.3). Also, the discovery of, perception of, or belief about another person's actual or perceived sex, gender, gender identity or sexual orientation is not provocation negating or excluding malice as an element of murder. The proposal specifies that nothing in these sections shall prevent a defendant from exercising his constitutionally protected rights, including his right to call for evidence in his favor that is relevant and otherwise admissible in a criminal prosecution.

Analysis:

Existing court data are insufficient to identify the number of cases, if any, that have resulted in not guilty verdicts, reduced charges, or lower sentences based on a defense related to the victims' actual or perceived sex, gender, gender identity or sexual orientation.

According to *Crime in Virginia*¹, a report from the Virginia Uniform Crime Reporting Program maintained by the Department of State Police, 185 hate crime offenses were reported in calendar year 2019. Of those, 37 involved sexual orientation bias and four involved gender identity or gender bias. The report does not provide the types of offenses associated with these incidents. However, of the total number of hate crimes reported (185), most resulted in arrests for intimidation (29.7%), followed by misdemeanor simple assault (29.2%), destruction of property (25.9%), and aggravated assault (6.5%). Another 8.7% were for other offenses not specifically identified.

The General Assembly recently adopted legislation allowing the judge to ascertain punishment following a jury trial unless the accused has requested that the jury ascertain punishment or he was found guilty of capital murder (Chapter 43 of the *Acts of Assembly, Special Session I*, effective July 1, 2021). This legislation may increase the number of jury trials requested by defendants. Changes to potential methods of adjudication, as well as the proposed restrictions on defense strategies and the potential for modifications in prosecutorial charging decisions, may have an impact on the number of agreements between parties on how to proceed in these cases.

Impact of Proposed Legislation:

State adult correctional facilities.² By limiting defense strategies, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, available data do not provide sufficient detail to estimate the number of additional felony convictions or the number of convictions for more serious offenses that may result under the proposal compared to that under present law. Similarly, the data do not provide sufficient detail to estimate possible changes in sentencing patterns for cases affected by the proposal. Therefore, the magnitude of the impact cannot be determined.

Local adult correctional facilities. The proposal may also increase local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

Adult community corrections programs. The proposal is not expected to increase the need for community corrections resources and will delay the need for services for some offenders affected by the proposal, as they may stay in prison longer prior to being released to the community.

Virginia's sentencing guidelines. Most felony convictions for murder, homicide, manslaughter and felony assault are covered by the sentencing 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.

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.

¹ https://www.vsp.virginia.gov/downloads/Crime_in_Virginia/Crime%20In%20Virginia%202019.pdf. Accessed Dec 28, 2020.

² Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only address the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

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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