



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2194 **Amendment in the Nature of a Substitute** **(Patron Prior to Substitute – Leftwich)**

LD#: 21104392

Date: 02/03/2021

Topic: Threats of death or bodily injury

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.

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 proposal amends § 18.2-60 of the *Code of Virginia* relating to threats of death or bodily injury. Under the proposed § 18.2-60(3), any person 18 years of age or older who communicates a threat in writing, including an electronically transmitted communication producing a visual or electronic message, to another to kill or to do serious bodily injury to any other person and makes such threat with the intent to (i) intimidate a civilian population at large; (ii) influence the conduct or activities of a government, including the government of the United States, a state, or a locality, through intimidation; or (iii) compel the emergency evacuation, or avoidance, of any place of assembly, any building or other structure, or any means of mass transportation would be guilty of a Class 5 felony. However, the proposal provides that any person younger than 18 years of age who commits such offense is guilty of a Class 1 misdemeanor.

Currently, under § 18.2-83, it is unlawful for any person to communicate a threat to bomb, burn, destroy or damage any place of assembly, building, or means of transportation or to communicate false information as to the existence of any danger related to such things. A violation of this section is a Class 5 felony if the offender is 15 years of age or older or a Class 1 misdemeanor if the offender is under the age of 15.

Also, under § 18.2-60, communicating a threat in writing or by other visual representation to kill or do bodily injury to a person or a member of that person's family is a Class 6 felony if it places the person in reasonable fear of death or bodily injury to himself or a family member. The penalty is the same if the threat is made on school grounds, at a school event or on a school bus, whether or not the object of the threat is aware of it, so long as the threat would put the person in reasonable fear of death or harm. Oral threats to any school employee or health care worker engaged in official duties are punishable as a Class 1 misdemeanor. If any such threat is made with the intent to commit an act of terrorism, the penalty is increased to a Class 5 felony.

In essence, the proposal expands upon existing provisions to include not only threats made to bomb, burn, etc., any place of assembly, building or means of transportation but also threats of death or bodily injury to any persons at such locations, without requiring that the threats be made to or about a specific person. However, the proposal still requires that such threat to another person be made in writing. Furthermore, it limits the applicability of the proposed provisions to circumstances in which the intent is to intimidate a civilian population, influence the conduct or activities of government, or compel the emergency evacuation or avoidance of any place.

Analysis:

According to the Sentencing Guidelines Data System (SG) for fiscal year (FY) 2019 and FY2020, 111 offenders were convicted of a Class 5 felony under § 18.2-83 for communicating a bomb threat, etc. Among the 100 offenders for whom this was the primary, or most serious, offense, 25% received a state-responsible (prison) sentence with a median sentence of 1.2 years. Another 35% received a local-responsible (jail) term for which the median sentence was six months. The remaining 40% of offenders did not receive an active term of incarceration to serve after sentencing.

Sentencing Guidelines data for the same two-year period indicate that 85 offenders were convicted of a Class 6 felony under § 18.2-60(A,1) for threatening in writing or by visual image to kill or do bodily harm to another. This was the primary offense for 69 of the offenders. Among these, 39.1% received a prison term with a median sentence of 1.5 years, while 36.2% were given a jail term with a median sentence of seven months. Nearly 25% of these offenders did not receive a term of incarceration to serve after sentencing.

According to the Circuit Court Case Management System (CMS), two offenders were convicted under § 18.2-60(A,2) during FY2019 and FY2020 for threatening to kill or do bodily harm to another while on school property, at a school event, or on a school bus. Both individuals were given a prison term with sentences of 1.3 years and 3.0 years, respectively. Another individual was convicted under § 18.2-60(A,1) for making a threat with a terroristic intent, but it was not the most serious offense in the case.

Existing data do not contain sufficient detail to determine the number of felony convictions that may occur as the result of the proposal.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal expands upon existing provision in certain ways but also limits the applicability of the new provisions to acts committed with the specified intent. Existing databases do not provide sufficient detail to estimate the number of incidents that would be covered by

the proposal that are not covered under current provisions. Thus, the net effect of the proposal on state-responsible (prison) beds cannot be determined.¹

Local adult correctional facilities. Similarly, the proposal's impact on local-responsible (jail) bed space needs cannot be determined.

Adult community corrections programs. Because the proposal might result in felony and misdemeanor convictions and subsequent supervision requirements for an additional number of 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 resources cannot be quantified.

Virginia's sentencing guidelines. While the sentencing guidelines cover the Class 6 felony under § 18.2-60 (A,1), the guidelines would not apply to the new felony offense added by the proposal (when the act is the primary, or most serious, offense at sentencing). However, such convictions may augment the guidelines recommendations 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.

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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¹ 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.