

Department of Planning and Budget

2021 Fiscal Impact Statement

1. Bill Number: HB2194

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

2. Patron: Leftwich

3. Committee: Courts of Justice

4. Title: Communicating threats

5. Summary: Current law (§ 18.2-83, Code of Virginia) prohibits making threats 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 punishable as 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.

Current law (§ 18.2-60) also prohibits threatening in writing or by other visual representation to kill or do bodily injury to a person or a member of that person's family, or threatening any school employee or health care worker engaged in official duties. Penalties for such offenses vary depending on whether threats are made orally (Class 1 misdemeanor), if the threat causes reasonable fear of death or bodily injury (Class 6 felony), or if the threat is made with the intent to commit an act of terrorism (Class 5 felony).

This bill establishes a Class 5 felony offense for any person 18 years of age or older who either (i) communicates to another by any means any threat to bomb, burn, destroy, shoot, stab, or in any other manner cause death or bodily injury to persons at any place of assembly, any building or other structure, or any means of mass transportation or (ii) communicates to another by any means information, knowing the same to be false, about any plan to bomb, burn, destroy, shoot, stab, or in any other manner cause death or bodily injury to persons at any place of assembly, any building or other structure, or any means of mass transportation and makes either such communication with the intent to (a) intimidate a civilian population at large, (b) influence the conduct or activities of the government of the United States or any state or local government through intimidation, (c) compel the emergency evacuation of any place of assembly, any building or other structure, or any means of mass transportation through intimidation, or (d) place any person in reasonable apprehension of death or bodily injury through intimidation. The bill provides that any person younger than 18 years of age who commits the offense is guilty of a Class 6 felony.

6. Budget Amendment Necessary: Yes. Item 402.

7. Fiscal Impact Estimates: Preliminary. See Item 8 below.

- 8. Fiscal Implications:** Based on data from the Sentencing Guidelines Data System for FY 2019 and FY 2020, 111 offenders were convicted of a Class 5 felony for communicating a bomb threat, etc. Among the 100 offenders for whom this was the primary, or most serious, offense, 25 percent received a state-responsible (prison) sentence with a median sentence of 1.2 years. Another 35 percent received a local-responsible (jail) term for which the median sentence was six months. The remaining 40 percent of offenders did not receive an active term of incarceration to serve after sentencing.

Sentencing Guidelines data also shows that, in FY 2019 and FY 2020, 85 offenders were convicted of a Class 6 felony for threatening in writing or by visual image to kill or do bodily harm to another person. This was the primary offense for 69 of the offenders. Among these, 39.1 percent received a prison term with a median sentence of 1.5 years, while 36.2 percent were given a jail term with a median sentence of seven months. Nearly 25 percent of these offenders did not receive a term of incarceration to serve after sentencing.

Further, based on Circuit Court Case Management System (CMS) data for FY 2019 and FY 2020 obtained by the Virginia Criminal Sentencing Commission, two offenders were convicted 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. These individuals were given prison terms with sentences of 1.3 years and 3.0 years, respectively. Another individual was convicted of making a threat with a terroristic intent, but it was not the most serious offense in the case.

The proposed legislation adds new felony offenses regarding threats made to bomb, burn, etc., any place of assembly, building or means of transportation and regarding threats made to cause death or bodily injury to any persons at such locations. The bill outlines intent of specific nature including: (a) intimidating a civilian population at large, (b) influencing the conduct or activities of the government of the United States or any state or local government through intimidation, (c) compelling the emergency evacuation of any place of assembly, any building or other structure, or any means of mass transportation through intimidation, or (d) placing any person in reasonable apprehension of bodily harm through intimidation.

For someone convicted of a Class 6 felony, a judge has the option of sentencing the offender to a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both. For anyone convicted of a Class 5 felony, a judge has the option of sentencing the offender to a term of imprisonment of not less than one year nor more than 10 years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both. Therefore, this proposal could result in an increase in the number of persons sentenced to jail or prison.

There is not enough information available to reliably estimate the increase in jail population as a result of this proposal. 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 2020), the estimated total state support for local jails averaged \$34.59 per inmate, per day in FY 2019.

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 56, 2020 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

Any potential fiscal impact on the Department of Juvenile Justice (DJJ) is indeterminate at this time.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Corrections, local and regional jails, Department of Juvenile Justice, Courts, Commonwealth's Attorneys, Public Defenders Office

10. Technical Amendment Necessary: None

11. Other Comments: None