



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 440 (Patron – Boysko)

LD#: 22103985

Date: 01/10/2022

Topic: Unlawful hazing

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 552 of the Acts of Assembly of 2021, Special Session I, 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 § 18.2-56 of the *Code of Virginia* relating to hazing. The proposal expands the definition of hazing to include the reckless or intentional act of causing another person to suffer severe emotional distress through outrageous or intolerable conduct. The bill also makes the crime of hazing a Class 5 felony if such hazing results in death or serious bodily injury to any person. Hazing that does not result in death or serious bodily injury remains a Class 1 misdemeanor. The bill provides immunity for arrest and prosecution for hazing under certain conditions. The proposal adds § 18.2-56.01 to create a civil penalty for certain organizations if such organization had specific credible knowledge that its student members were participating, aiding, or assisting in any act of hazing and did not attempt to intervene to stop the hazing or report it to the appropriate local authorities. Failure to prevent unlawful hazing pursuant to this section is punishable by a civil penalty of no more than \$50,000.

Analysis:

According to the General District Court Case Management System (CMS) for fiscal year (FY) 2016 through FY2021, a misdemeanor conviction for hazing under § 18.2-56 was the primary, or most serious, offense in nine cases sentenced during this time period. All nine offenders received local-responsible (jail) terms with a median sentence of one month.

Existing data do not contain sufficient detail to estimate the number of additional individuals who may be convicted of the proposed Class 5 felony. However, affected offenders may be sentenced similarly

to those who are currently convicted of involuntary manslaughter under § 18.2-36. Sentencing Guidelines data for FY2020 and FY2021 indicate that 51 offenders were convicted of involuntary manslaughter under § 18.2-36. This offense was the primary, or most serious, offense at sentencing in 47 of the cases. Of these, 10.6% of the offenders did not receive an active term of incarceration to serve after sentencing. Another 23.4% were given a local-responsible (jail) term for which the median sentence was 6.0 months. The remaining 66.0% received a state-responsible (prison) term with a median sentence of 4.0 years.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the definition of hazing and elevating the penalty for hazing resulting in death or serious bodily injury from a Class 1 misdemeanor to a Class 5 felony, 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 new felony convictions that may result from enactment of the proposal. Therefore, the magnitude of the impact on prison bed space needs cannot be determined.

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

Adult community corrections programs. Raising a crime from a Class 1 misdemeanor to a Class 5 felony may decrease the demand for local community-based probation services and increase the need for state community corrections resources. The *Code of Virginia*, however, allows judges to utilize local community-based probation programs for Class 5 and Class 6 felons as well as misdemeanants. The net impact on state community corrections resources and local community-based probation services cannot be estimated.

Virginia's Sentencing Guidelines. As a new felony offense, convictions under § 18.2-56 would not be covered by the Sentencing Guidelines as the primary (most serious) offense in a case; however, convictions for this crime may augment the Guidelines recommendation if a covered offense is the most serious at sentencing. 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 552 of the Acts of Assembly of 2021, Special Session I, 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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