



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 531 (Patron – DeSteph)

LD#: 22103359

Date: 01/05/2022

Topic: Crimes committed during a riot

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 2021 Acts of Assembly, 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 §§ 18.2-57, 18.2-151.1, 18.2-152.7:1, 18.2-404, and 18.2-414 of the *Code of Virginia*, relating to crimes committed during a riot or unlawful assembly. Under the proposal, it would be:

- a Class 6 felony to commit an assault and battery while participating in a riot (§ 18.2-57);
- a Class 1 misdemeanor to damage or interfere with a conspicuously-marked law-enforcement vehicle (§ 18.2-151.1);
- a Class 6 felony to damage or interfere with a conspicuously marked law-enforcement vehicle occupied by a law-enforcement officer with the intent to prevent an officer from performing any official duties (§ 18.2-151.1);
- a Class 1 misdemeanor to maliciously block access to any business (§ 18.2-404);
- a Class 1 misdemeanor to maliciously obstruct a highway (proposed § 18.2-414.3);
- a Class 6 felony for persons participating in a riot to damage property other than buildings if the cost of the damage is \$1,000 or more (§ 18.2-414); and
- a Class 1 misdemeanor to electronically publish another person's personal identifying information with the intent that a third party will use it to incite violence, commit a crime against the person, or threaten or harass the person in a manner that places him in reasonable fear of bodily harm.

In addition to criminal penalties, the proposal creates a civil action for damages caused during a riot or unlawful assembly and an affirmative defense in a civil action for wrongful death or injury to a person

participating in a riot. Under the proposal, highway maintenance funding could be eliminated for localities that reduce budgets for law enforcement.

Analysis:

The proposal expands the applicability of, or increases the penalties for, several existing misdemeanor and felony offenses. While data are insufficient to identify the number of individuals who may be affected by the proposal, such individuals may be sentenced similarly to those convicted under existing provisions. For example, individuals convicted of the proposed Class 6 felony for assault and battery during a riot may be sentenced similarly to those currently convicted of a Class 6 felony for unlawful injury (§ 18.2-51). See table below.

Offenders Convicted of Select Offenses

Time Period	Primary Offense	Number of Sentencing Events	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence
FY2020-FY2021	Assault and battery – Class 1 misd. (§ 18.2-57) ¹	5,153	51.6%	48.4%	1.2 mos.	N/A	N/A
FY2020-FY2021	Unlawful injury – Class 6 felony (§ 18.2-51) ³	550	25.3%	35.1%	6.0 mos.	39.6%	1.8 yrs.
FY2020-FY2021	Harassment by computer – Class 1 misd. (§ 18.2-152.7:1) ¹	78	75.6%	24.4%	1.0 mo.	N/A	N/A
FY2016-FY2021	Obstructing free passage – Class 1 misd. (§ 18.2-404) ¹	40	30.0%	70.0%	0.2 mos.	N/A	N/A
FY2016-FY2021	Damaging law enforcement vehicle, fire equipment, etc. - Class 1 misd. (§ 18.2-151.1) ¹	6	66.7%	33.3%	0.7 mos.	N/A	N/A
FY2016-FY2021	Intentional injury to person, dwelling or other building during riot – Class 6 felony (§ 18.2-414) ²	0	N/A	N/A	N/A	N/A	N/A
FY2020-FY2021	Vandalism of property or monument causing damage of \$1,000 or more – Class 6 felony (§ 18.2-137(B,ii)) ³	170	35.3%	44.7%	6.0 mos.	20.0%	1.3 yrs.

Note: The analysis is based on cases in which the specified offense was the primary, or most serious, offense in the sentencing event.

¹ Source: Supreme Court of Virginia's General District Court Case Management System, as analyzed by the Sentencing Commission

² Source: Supreme Court of Virginia's Circuit Court Case Management System, as analyzed by the Sentencing Commission

³ Source: Virginia Criminal Sentencing Commission's Sentencing Guidelines Data System

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of existing felony offenses and creating two new felony crimes, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, existing data sources do not contain sufficient detail to estimate the number of additional felony convictions that may occur following enactment of the proposal. Therefore, the magnitude of the impact on prison bed space needs cannot be quantified.

Local adult correctional facilities. Because it expands the applicability of existing offenses and establishes new misdemeanor and felony penalties, the proposal may increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be estimated.

Adult community corrections resources. Because the proposal could result in felony 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 affected by the proposal cannot be determined, the potential impact on community corrections cannot be determined.

Virginia's Sentencing Guidelines. The Sentencing Guidelines currently do not cover felony violations under § 18.2-414 and will not cover any of the proposed felonies under §§ 18.2-57 or 18.2-151.1. However, such convictions may 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. 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 2021 Acts of Assembly, 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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