



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill 1298 (Patron—Mulchi)

LD #: 25104149

Date: 01/06/2024

Topic: Threatening language over the telephone

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
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 2 of the Acts of Assembly of 2024, 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 § 18.2-427 regarding the use of profane or threatening language over the telephone. The proposal creates a Class 6 felony for any person who uses obscene, vulgar, profane, lewd, lascivious, or indecent language, or makes any suggestion or proposal of an obscene nature, or threatens any illegal or immoral act with the intent to coerce, intimidate, or harass any person, over any telephone to (i) the same person 50 or more times within a 48-hour period, or (ii) two or more family or household members of a person in an attempt to communicate with such person 50 or more times within a 48-hour period.¹

Currently, under § 18.2-427, using obscene, profane, or threatening language to intimidate or harass any person over the telephone is a Class 1 misdemeanor.

Analysis:

Existing data sources do not provide sufficient detail to determine the number of instances that may be affected by the proposal. However, affected offenders may be sentenced similarly to offenders sentenced under existing Class 6 felony provisions.

According to Sentencing Guidelines data for fiscal year (FY) 2019 through FY2024, 327 individuals were convicted of a Class 6 felony under § 18.2-60(A,1) for communicating a threat in writing. This was the

¹ The proposed Class 6 felony would be eligible for the enhanced sentence credits specified in § 53.1-202.3, whereby offenders serve a minimum of 67% of the sentence ordered by the court.

primary, or most serious, offense for 254 defendants. Of these defendants, 88 (34.6%) did not receive any active term of incarceration, 91 (35.8%) received a local-responsible (jail) sentence with a median sentence of 7.0 months, and 75 (29.5%) received a state-responsible (prison) sentence with a median sentence of 1.5 years.

According to the General District Court Case Management System (CMS) for fiscal year (FY) 2023 through FY2024, 489 individuals were convicted of a Class 1 misdemeanor under § 18.2-427 for making abusive, profane, or threatening calls or texts over a telephone. Of these, 38.7% were sentenced to local-responsible (jail) terms with a median sentence of 1.2 months. The remaining 61.3% did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. Because it establishes a new felony offense, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Available data are insufficient to identify the number of defendants who may be convicted of the proposed felony or to estimate the number of new state-responsible sentences that may result from enactment of the proposal. Thus, the magnitude of the impact on prison bed space needs cannot be determined.

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

Adult community corrections programs. 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 state community corrections resources. Since the number of cases that may be affected by the proposal cannot be determined, the potential impact on community corrections cannot be estimated.

Virginia's Sentencing Guidelines. The proposed felony initially would not be covered by the Sentencing Guidelines when it is the primary, or most serious, offense in a case. Such convictions, however, could augment the Guidelines recommendation as additional offenses if the most serious offense at sentencing is covered by the Guidelines. The proposed felony would not be defined as violent under § 17.1-805(C) for Guidelines purposes. No immediate adjustment to the Guidelines would be necessary under the proposal. If the proposal is enacted, the Sentencing Commission in the future would conduct analyses to determine the feasibility of adding the new felony to the Guidelines system.

Juvenile correctional centers. 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 2 of the Acts of Assembly of 2024, 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.