



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill 1271 Floor Amendment in the Nature of a Substitute (Patron prior to substitute – Perry)

LD#: 25106455

Date: 1/30/2025

Topic: Threats of death or bodily injury

Fiscal Impact Summary:

<ul style="list-style-type: none"> • State Adult Correctional Facilities: \$50,000 * • Local Adult Correctional Facilities: Cannot be determined • Adult Community Corrections Programs: Cannot be determined 	<ul style="list-style-type: none"> • Juvenile Direct Care: Cannot be determined ** • Juvenile Detention Facilities: Cannot be determined ** <p style="text-align: center;">** Provided by the Department of Juvenile Justice</p>
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* 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:

Currently, under § 18.2-60, communicating a threat to kill or do bodily injury in writing, including an electronically transmitted communication producing a visual or electronic message, 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 themselves or a family member.¹ 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 him in reasonable fear of death or harm. If a person 18 years of age or older communicates a threat with the intent to commit an act of terrorism, the penalty is increased to a Class 5 felony. If a person under the age of 18 commits such an offense, it is a Class 1 misdemeanor. An oral threat made to a health care worker who in the performance of his duties or a school employee is punishable as a Class 1 misdemeanor.

The proposal makes several changes. For example, the proposal:

- Adds language to clarify that an electronically transmitted communication producing a visual or electronic message includes an email, a text message, or a message or post on any social media platform under §§ 18.2-60(A,1) and 18.2-60(A,2);

¹ Under current law, felony offenses under § 18.2-60 (related to threats of death or bodily injury) are eligible for the enhanced sentence credits specified in § 53.1-202.3, whereby individuals must serve a minimum of 67% of the sentence ordered by the court. The proposed legislation does not change the earned sentence credits available to offenders convicted of these felonies.

- Specifies that a Class 6 felony offense under § 18.2-60(A,1) is applicable if a threat to kill or do bodily injury to a person was made regardless of whether the person who is the object of the threat actually receives the threat and if the threat places such person who is the object of the threat, or any member of his family, in a reasonable apprehension of death or bodily injury;
- Includes oral threats and replaces “do bodily harm” with “discharge a firearm” under § 18.2-60(A,2) (threats made within or on any schools and school bus); and
- Makes it clear that a Class 6 felony under § 18.2-60(A,2) is applicable if the threat would place the person who is the object of the threat, or anyone who is included in the threat, in reasonable apprehension of death or bodily harm.

Analysis:

Given available data, it is unknown how many individuals would be affected by the clarifying language as to what constitutes a visual or electronic message, how many individuals may be convicted of a felony for oral threats at school, or how many individuals may be affected by other proposed changes to §§ 18.2-60(A,1) and 18.2-60(A,2). Such individuals, however, may be sentenced similarly to offenders currently convicted under these provisions.

According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2023 and FY2024, 145 offenders were convicted of Class 6 felonies under §§ 18.2-60(A,1) or 18.2-60(A,2) for communicating threats. This was the primary, or most serious, offense for 117 offenders. Of these, 25.6% received a state-responsible (prison) term with a median sentence of 2.0 years. Another 47% received a local-responsible (jail) term for which the median sentence was 6.0 months. The remaining 27.4% of offenders did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal potentially expands existing Class 5 and Class 6 felonies by adding, clarifying, or replacing language in § 18.2-60. The net effect on the number of convicted individuals and associated sentencing patterns cannot be estimated; therefore, the net impact on future state-responsible (prison) bed space needs cannot be determined.

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

Adult community corrections programs. The potential impact on community corrections resources cannot be estimated.

Virginia’s Sentencing Guidelines. While the Sentencing Guidelines cover the Class 6 felony under § 18.2-60(A,1), the Guidelines do not apply to the other felonies in this section when the conviction is the primary, or most serious, offense at sentencing. However, such convictions may augment the Guidelines recommendation (as additional offenses) if the most serious offense at sentencing is covered by the Guidelines. Felonies under § 18.2-60 are currently not defined as violent under § 17.1-805(C) for Guidelines purposes. 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 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.

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