



## Impact Analysis on Proposed Legislation

### *Virginia Criminal Sentencing Commission*

#### **House Bill No. 1877** **Amendment in the Nature of a Substitute** **(Patron Prior to Substitute – McDougle)**

**Date Submitted:** 1/21/2005

**LD #:** 05-5493408

**Topic:** Defacement of public or private facilities

#### **Proposed Change:**

The proposal amends §§ 15.2-1812.2, 18.2-137 and 19.2-358 to increase the penalties for certain acts of defacement of property.

Under the proposed § 15.2-1812.2, the criminal penalties apply regardless of the cost of the damage and there is a mandatory minimum fine of \$500; in addition, a 10-day mandatory minimum also applies if the defacement is more than 20 feet off the ground (or on a railroad or highway overpass) or the defacement promotes the activities of a criminal street gang. The proposed changes to § 15.2-1812.2 specify that the locality may clean or cover the defacement if the owner does not do so within 15 days.

The proposed § 18.2-137 expands the existing Class 6 felony to include defacement that is more than 20 feet above ground level, promotes criminal gang activity, or is committed by a person who has previously been convicted under §§ 15.2-1812.2 or 18.2-137, and specifies a 10-day mandatory jail term and a mandatory minimum fine of \$1,000. The proposal also adds a mandatory minimum fine of \$500 to the existing Class 1 misdemeanor.

In § 19.2-358, the proposal adds language such that anyone failing to pay restitution ordered under § 15.2-1812.2 within 60 days shall be in default and subject to suspension of his driver's license.

Currently, under § 18.2-137, intentionally damaging or defacing any property, memorial or monument is a Class 1 misdemeanor if the value of or damage to the property is less than \$1,000 and a Class 6 felony if the value or damage is \$1,000 or more. No mandatory, minimum fines or incarceration terms are specified under current *Code*. Similarly, under § 15.2-1812.2, a locality may adopt an ordinance, with violation punishable as a Class 1 misdemeanor, prohibiting the willful and malicious damage to or defacement of any public building or other property, when the damage is less than \$1,000.

#### **Analysis:**

According to the fiscal year (FY) 2003 and FY2004 Local Inmate Data System (LIDS), which contains information on offenders confined pre- or post-trial in jail, there were 872 misdemeanor convictions for property damage under § 18.2-137. Nearly all (88%) of these offenders received a local-responsible (prison) term, with a median sentence of one month.

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The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.

During the same two-year period, LIDS reveals 197 felony convictions for property damage under this statute. Of these offenders, over half (60%) received a jail term (median sentence of three months), while nearly 23% were given a state-responsible (prison) term, with a median sentence of 27 months ordered by the court.

**Impact of Proposed Legislation:**

Under the proposal, felony provisions for defacement of property are expanded. Conviction of these offenders could increase the need for state-responsible (prison) bed space. In addition, there is a proposed mandatory minimum term of 10-days in jail under circumstances; application of this mandatory minimum may increase the need for local-responsible (jail) beds. However, the number of incidents affected by the proposal and the potential increase in felony prosecutions cannot be estimated with available data.

Felony convictions under § 18.2-137 are not covered by Virginia's sentencing guidelines as the primary (or most serious) offense in a sentencing event. However, any conviction under §§ 18.2-137 or 15.2-1812.2 may still augment the guidelines recommendation if a covered offense is the most serious at conviction. No adjustment to the sentencing guidelines would be necessary under the proposal.

The Department of Juvenile Justice (DJJ) reports that, if enacted, the proposal is not expected to increase Juvenile Correctional Center (JCC) bed space needs.

**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 and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

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