



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 5075 (Patron – DeSteph)

LD#: 20200748

Date: 08/17/2020

Topic: Property damage during a riot

Fiscal Impact Summary:

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 1289 of the Acts of Assembly of 2020 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends § 18.2-414 of the *Code of Virginia* regarding injury to property or persons during a riot. Currently, it is a Class 6 felony for any person or persons, unlawfully or riotously assembled, to pull down, injure, or destroy any building or perpetrate any premeditated injury on another person. The proposal would expand this provision to include damage to the property of another where the cost of damage is \$1,000 or more.

Currently, intentional destruction of any property or monument where the cost of damage is \$1,000 or greater is punishable as a Class 6 felony under § 18.2-137(B). While the proposed amendment does not specify that intent to damage is a condition for the felony offense, offenders who commit \$1,000 or more of property damage during a riot or unlawful assembly may currently be convicted under § 18.2-137(B) in cases where intentionality is evidenced.

Analysis:

According to the Circuit Court Case Management System (CMS) data for fiscal year (FY) 2014 through FY2019, two offenders were convicted of a felony under § 18.2-414 for causing injury to property or persons during a riot. This offense was the primary, or most serious, offense for one offender, who was sentenced to a local-responsible (jail) term of four months.

According to FY2018 and FY2019 Sentencing Guidelines data, 407 offenders were convicted of a Class 6 felony for damage/destruction of any property or monument, \$1,000 or more, in violation of § 18.2-

137(B). This charge was the primary, or most serious, offense in 167 cases. While 40.7% of these offenders did not receive an active term of incarceration to serve after sentencing, 46.1% were sentenced to local-responsible (jail) terms for which the median sentence length was 6.0 months. For the remaining 13.2% of offenders sentenced to serve a state-responsible (prison) term, the median sentence length was 1.4 years.

In addition, felony convictions under § 18.2-414 are defined as violent offenses for the purposes of the sentencing guidelines (per § 17.1-805), while convictions under § 18.2-137(B) are not. Offenders with prior convictions for violent felony offenses receive “enhancements” on the sentencing guidelines that increase the recommended sentences for those offenders.

Impact of Proposed Legislation:

State adult correctional facilities. The proposed legislation may expand the applicability of an existing felony to additional acts, for offenses not currently eligible for conviction under § 18.2-137(B). Additionally, it would increase future sentencing guidelines recommendations for offenders with prior convictions under § 18.2-414 compared to those with § 18.2-137(B) convictions, and would potentially result in longer sentences imposed by judges. Due to both aspects of this proposal, it may increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing databases do not provide sufficient detail to determine the number of affected offenders or the changes in sentencing patterns likely to result from enactment of the proposal. As a result, the magnitude of the impact on prison bed space needs cannot be quantified.

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 resources. The impact on adult community corrections resources cannot be determined.

Virginia’s sentencing guidelines. The sentencing guidelines do not cover violations of § 18.2-414 that are processed in Virginia’s circuit courts. However, convictions under § 18.2-414 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 (DJJ), 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 1289 of the Acts of Assembly of 2020 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.