



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 828

Amendment in the Nature of a Substitute (Patron Prior to Substitute – Reeves)

LD #: 18105983

Date: 1/25/2018

Topic: Damage to infrastructure or utilities

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 836 of the 2017 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends § 18.2-162 of the *Code of Virginia* relating to damage or trespass to critical infrastructure or utilities. The proposal expands this provision to include damage to a cellular telephone or other wireless telecommunication facility. The proposal also adds language to cover any radio or television transmission facility, alumina refinery, chemical, polymer, or rubber manufacturing facility, dam, port, railway yard or tracks, trucking terminal or other freight transportation facility, as well as certain steelmaking facilities and any facility regulated by the U.S. Department of Homeland Security Chemical Facility Anti-Terrorism Standards Program. The proposal also increases the damage threshold necessary to qualify for felony prosecution under this provision from damage costing more than \$200 to that costing more than \$500.

Currently, violation of § 18.2-162 is punishable as a Class 4 felony if the damage is \$200 or more or a Class 3 misdemeanor if the damage is less than \$200. However, if the damage results in exposure to radioactive materials or ionizing radiation causing injury to another it, is a Class 3 felony or, if death results, a Class 2 felony.

Analysis:

According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2012 through FY2017, 26 offenders were convicted of a felony under § 18.2-162 for damaging infrastructure or utilities as defined by the current provision. This was the primary, or most serious, offense in six of the cases. Of these six offenders, three received a state-responsible (prison) term with a median sentence of two years.

One offender received a local-responsible (jail) term of six months. The remaining two offenders did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. Because it expands the applicability of an existing felony to cover wireless telecommunications and establishes a new felony pertaining to manufacturing facilities, certain transportation and freight delivery systems, and other facilities, the proposal may increase the number of felony convictions and, thereby, increase the future state-responsible (prison) bed space needs of the Commonwealth. The proposal would also raise the felony threshold for damage. As a result, some offenses currently punished as felonies would be reduced to misdemeanors under the proposal.

Existing data do not provide sufficient detail to estimate the number of new felony convictions that could result from enactment of the proposal nor the number of convictions that would change from felony to misdemeanor. Thus, net impact of the proposal on state-responsible (prison) bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal may increase the 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 additional offenders, the proposal may increase the need for adult community corrections resources. However, the impact on community corrections programs cannot be calculated.

Virginia's sentencing guidelines. Felony convictions under § 18.2-162 are not covered by the sentencing guidelines when they are the primary, or most serious, offense in a case. However, convictions under this statute could 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 836 of the 2017 Acts of Assembly 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.