



## Fiscal Impact Statement for Proposed Legislation

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### Virginia Criminal Sentencing Commission

#### House Bill No. 2132 Amendment in the Nature of a Substitute (Patron Prior to Substitute – Wilt)

LD#: 23105226

Date: 01/25/2023

Topic: Underground Utility Damage Prevention Act

#### 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 2 of the Acts of Assembly of 2022, 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.

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#### Summary of Proposed Legislation:

The proposal amends the Underground Utility Damage Prevention Act (Chapter 10.3 of Title 56, §§ 56-265.14 through 56-265.32). It requires excavators to review updates in the 811 positive response system and conduct additional safety verifications before digging. The proposal adds § 56-265.24:1 to the *Code of Virginia* making it a Class 6 felony for any person to knowingly excavate in violation of the Act, and to fail or refuse to stop work when requested to do so. It also increases the maximum civil penalty for violations of the Act from \$2,500 to \$10,000.

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#### Analysis:

Existing data sources do not contain sufficient detail to identify the number of additional individuals who, if the proposal were enacted, would be convicted of a Class 6 felony under the proposed § 56-265.24:1. However, offenders convicted of the proposed felony may be sentenced similarly to those convicted of a Class 6 felony under existing provisions of § 18.2-137(B,ii) for vandalism of property with a value of \$1,000 or more.

According to the Sentencing Guidelines database for FY2021 and FY2022, 448 offenders were convicted of a Class 6 felony under § 18.2-137(B,ii) for vandalism of property with a value of \$1,000 or more. In 207 cases, this offense was the primary (most serious) offense. Of these, 83 offenders (40.1%) did not receive an active term of incarceration to serve after sentencing. Another 86 offenders (41.5%) were

sentenced to local-responsible (jail) terms with a median sentence of five months. The remaining offenders (18.4%) were given state-responsible (prison) terms with a median sentence of 1.3 years.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By adding a new Class 6 felony to the *Code*, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Available data sources do not contain sufficient detail to estimate the number of additional felony convictions that may result from enactment of the proposal. Therefore, the magnitude of the impact on 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 determined.

**Adult community corrections resources.** Because the proposal could result in convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases affected cannot be determined, the potential impact on community corrections cannot be quantified.

**Virginia's Sentencing Guidelines.** As a new felony, convictions under the proposed § 56-265.24:1 would not be covered by the Sentencing Guidelines as the primary, or most serious, offense. However, such convictions may augment the Guidelines recommendation (as additional offenses) 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.

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**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 2022, 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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