



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2265

(Patron – Bell)

Date Submitted: 01/07/03

LD #: 03-0361627

Topic: Drive while intoxicated

Proposed Change:

The proposal amends § 18.2-270 relating to the penalties for driving while intoxicated (DWI) to achieve the following.

- The proposal lowers the blood alcohol level required for additional mandatory, minimum penalties to apply in driving while intoxicated (DWI) cases.
 - For a first offense, blood alcohol thresholds would drop from .20 to .16 and from .25 to .24 for a 5-day and a 10-day mandatory term to apply, respectively.
 - For a second offense within ten years, blood alcohol thresholds would drop from .20 to .16 and from .25 to .24 for a 10-day and a 20-day mandatory term to apply, respectively.
- The proposal establishes mandatory, minimum penalties for transporting other persons in the vehicle while the driver is intoxicated.
 - The penalty for transporting a juvenile would increase from a fine with community service to a ten-day mandatory, minimum term of confinement for each juvenile in the vehicle, while the penalty for transporting an adult (an act not subject to any additional penalty under current law) would result in a five-day mandatory, minimum term for each adult in the vehicle.
- The proposal removes the inclusive 10-year time period that was removed for both third and fourth convictions of DWI. An inclusive five-year period would remain in effect for a third conviction of DWI; conviction under this provision has a longer mandatory term of incarceration than if the offender took more than five years to accumulate the third conviction.
- The proposal creates an additional mandatory, minimum penalty of five days for driving while intoxicated when it results in an accident causing injury to another.
- The proposal adds language to specify that mandatory, minimum terms associated with DWI violations must be served consecutively.

In addition, the proposed legislation amends § 19.2-81 to allow law enforcement officers to arrest DWI offenders without a warrant when the offense was not committed in the presence of the officer.

Current Practice:

According to fiscal year (FY) 2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, 1,124 offenders were convicted under the felony provisions of §§ 18.2-266 and 18.2-270.

According to FY2001 and FY2002 Local Inmate Data System (LIDS) data, there were 99 convicted under the misdemeanor provisions of the same statutes and 117 under provisions that carry a one-year maximum but are not identified as being either a felony or a misdemeanor. Nearly all of these offenders (89 to 97%) were sentenced to some term of incarceration. See the *Background Sentencing Information*, below, for more details.

Background Sentencing Information

| Felony DWI Crimes | Number of Cases | % No Incarceration | % Local Responsible | % State Responsible | Median Prison Sentence |
|---|-----------------|--------------------|---------------------|---------------------|------------------------|
| Third conviction within 10 years | 860 | 10% | 62% | 28% | 1.2 yrs. |
| Third conviction within 5 years | 140 | 10% | 68% | 22% | 2 yrs. |
| Fourth or subsequent conviction within 10 years | 124 | 6% | 21% | 73% | 1.7 yrs. |

Data Source: FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) database

| DWI Crimes not defined as felonies but eligible for a prison sentence | Number of Cases | % No Incarceration | % Local Responsible | % State Responsible | Median Jail Sentence |
|---|-----------------|--------------------|---------------------|---------------------|----------------------|
| Second conviction within 10 years, blood alcohol level .20 to .25 | 73 | 3% | 97% | 0% | 10 days |
| Second conviction within 5 to 10 years | 44 | 5% | 95% | 0% | 14 days |

Note: Includes only convictions of those held in the local jail pretrial or sentenced to serve time post-trial.

Data Source: FY2001 and FY2002 Local Inmate Data System (LIDS) database

| Misdemeanor DWI Crimes | Number of Cases | % No Incarceration | % Local Responsible | % State Responsible | Median Jail Sentence |
|--|-----------------|--------------------|---------------------|---------------------|----------------------|
| First conviction, blood alcohol level .20 to .25 | 62 | 11% | 89% | 0% | 5 days |
| First conviction, blood alcohol level greater than .25 | 37 | 0% | 100% | 0% | 10 days |

Note: Includes only convictions of those held in the local jail pretrial or sentenced to serve time post-trial.

Data Source: FY2001 and FY2002 Local Inmate Data System (LIDS) database

The Division of Forensic Sciences of the Department of Criminal Justice Services reported performing 29,499 blood alcohol (BAC) tests in 2001. Of those, approximately 20% (6,028) were between .16 and .20 (levels that would become eligible for a five-day mandatory minimum). Similarly, about .8% (222) of the BAC test results were between .24 and .25 (levels that would become eligible for an additional five-day mandatory minimum).

The Department of Motor Vehicles (DMV) reported 23,363 convictions for DWI that were based on alcohol alone in 1999.* Of those, 83% (23,363) were for a first offense, while 14% (3,894) were for a second offense. In addition, 8,343 persons were reported by DMV

* The available data for 2000 and 2001 differed markedly from earlier years. The primary difference was that the category that does not differentiate between a first, second or third offense grew from 40 in 1999 to 5,745 in 2000, and 12,863 in 2001, while the totals fluctuated around 28,000 for all three years.

as being killed or injured in alcohol-related traffic accidents (excluding drivers who were killed) in 2001. Although there is no information on passengers who were not killed or injured, there were 556 passengers under the age of 18 and 1,950 passengers 18 or older who were as killed or injured in alcohol-related traffic accidents in 2001.

Impact of Proposed Legislation:

The proposed legislation expands the applicability of existing mandatory, minimum penalties, adds additional mandatory, minimum penalties in certain circumstances, and makes the sentences for DWI consecutive to any other crimes for which the offender may have been convicted. Sentences under the proposal assumed that terms of incarceration for DWI would always be consecutive and that the five and 10 day mandatory minimums would be applied in proportion to the incidents reported by the Division of Forensic Sciences and DMV. In this scenario, over the next six years, the net high state-responsible impact would be about eight beds.

In addition, there will be an impact on local-responsible (jail) bed space; based on the same methodology, there will be an increased need for approximately one bed statewide, for a cost to the state of \$12,863 (using FY2001 jail inmate costs) for reimbursement to localities. There would be an additional cost for the localities of \$9,302 for the same bed.

Elements of this proposal could not be estimated with existing data. These included the removal of an inclusive 10-year time period to accumulate a third or fourth DWI conviction, and the number of passengers, regardless of age, who were not killed or injured in alcohol-related crashes.

No adjustment to the sentencing guidelines would be necessary under the proposal.

Estimated Six-Year Impact in State-Responsible (Prison) Beds

| FY04 | FY05 | FY06 | FY07 | FY08 | FY09 |
|------|------|------|------|------|------|
| 0 | 1 | 4 | 6 | 7 | 8 |

Estimated Six-Year Impact in Local-Responsible (Jail) Beds

| FY04 | FY05 | FY06 | FY07 | FY08 | FY09 |
|------|------|------|------|------|------|
| 0 | 1 | 1 | 1 | 1 | 1 |

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$169,103 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.

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary's Committee on Inmate Forecasting in 2002.
2. New cases representing misdemeanor local-responsible sentences were based on forecasts developed by the Virginia Criminal Sentencing Commission using the LIDS database. New cases representing felony no incarceration and local-responsible sentences were based on forecasts developed by the Commission using the PSI database.
3. Cost per prison bed was assumed to be \$22,286 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*

4. Cost per jail bed was based on The Compensation Board's FY2001 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$31.86 per day or \$11,637 per year. The local cost was calculated by using the daily expenditure cost of \$57.45 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$23.04 per day or \$8,415 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.***

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2003, is phased in to account for case processing time.
2. The bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates for felony convictions were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2001. For DWI offenses, this rate was 89.8%. Release dates for misdemeanor convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by misdemeanants, sentenced in FY2000, with no accompanying felony conviction; this rate was 39.15%.
3. Sentences for convictions under § 18.2-266, and penalty enhancements as defined in § 18.2-270, were treated as being consecutive to the term of incarceration given for all other offenses at sentencing. If the sentence for DWI was already consecutive or was the only offense at sentencing, then the total time would be unchanged. If the sentence was concurrent, then the sentence was adjusted to reflect the longest non-DWI term of incarceration plus the term for each conviction for DWI.
4. Additional mandatory minimum terms were applied on a proportional basis.
 - a. Approximately 20% of the cases were treated as having been sentenced for having a BAC test result between .16 and .20. Of these, 86% were given an extra five days for a first offense, and 14% were given an extra 10 days for a second offense.
 - b. Approximately 1% of the cases were treated as having been sentenced for having a BAC test result between .24 and .25. Of these, 86% were given an extra five days for a first offense, and 14% were given an extra 10 days for a second offense.
 - c. Approximately 28% of the cases were treated as having a death (other than the driver) or an injury associated with crime. These cases were given an extra five days.
 - d. Approximately 2% of the cases were treated as having a passenger under the age of 18 in the vehicle when the crime was committed. This reflects the proportion of passengers under the age of 18 who were killed or injured in alcohol-related traffic accidents. These cases were given an extra 10 days.
 - e. Approximately 7% of the cases were treated as having passengers 18 or older in the vehicle when the crime was committed. This reflects the proportion of passengers 18 and older who were killed or injured in alcohol-related traffic accidents. These cases were given an extra five days.