



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1034

(Patron – Melvin)

Date Submitted: 2/6/04

LD #: 04-5936100

Topic: Multiple DUI offenders

Proposed Change:

This proposal adds §§ 46.2-350.1 through 46.2-350.9 to establish provisions for the suspension and revocation of licenses for offenders with multiple convictions for driving under the influence (DUI). The proposal defines a multiple DUI offender as a person who has been convicted of three DUI-related offenses in five years or four DUI-related offenses in ten years; DUI-related offenses include: DUI (§ 18.2-266 or 46.2-341.24(A)), maiming as a result of DUI (§ 18.2-51.4), and involuntary or aggravated involuntary manslaughter (§ 18.2-36.1).

Under the proposal, the Department of Motor Vehicles (DMV) will identify multiple DUI offenders and revoke the licenses of those drivers. DMV must immediately notify each multiple DUI offender of the revocation and of his right to file a petition and request a hearing. The license revocation becomes effective 30 days from the date the notification was mailed. This process will not apply to offenders whose license is already revoked for a DUI-related offense pursuant to § 46.2-391 or offenders whose most recent DUI conviction is more than five years old. Once an offender has been determined by DMV to be a multiple DUI offender, DMV may not issue a new or duplicate license to the offender unless a court reverses the finding or the offender has successfully petitioned the court to have his driving privileges restored. A person is not eligible to petition for restoration of full driving privileges for a minimum of five years after being declared a multiple DUI offender, although the court can approve a restricted license after three years. When restoring driving privileges, the court must require the installation of an ignition interlock device in the offender's car.

Under the proposed § 46.2-350.7(B), a person declared to be a multiple DUI offender who drives while his license is revoked would be guilty of a Class 1 misdemeanor for the first offense if his driving did not endanger the life, limb or property of another; this crime would carry a mandatory minimum sentence of 10 days. If a multiple DUI offender is convicted of driving on a revoked license a second time or his driving endangered the life, limb or property of another or he committed a new DUI offense while driving on a revoked license, the offender would be guilty of a felony punishable by 1 to 5 years and would be subject to a 12-month mandatory minimum term of confinement. The imposition of the sentence could be suspended in these cases if the offender completes a detention center or diversion center incarceration program.

In current *Code*, provisions similar to the proposal are defined in § 46.2-391. Under § 46.2-391, DMV revokes the licenses of offenders with two DUI convictions within ten years and offenders

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who have two convictions within ten years for driving on a revoked license following a DUI offense; unless otherwise ordered by the court, these offenders may not be reissued a license for three years. In addition, the offender must complete an Alcohol Safety Action Program, if required by the court, before a license can be reinstated. Currently, DMV also revokes the licenses of offenders adjudged to have three DUIs within ten years and any offender convicted of vehicular manslaughter or maiming resulting from a DUI. After five years, the offender can petition the court for restoration of his driving privileges. As a condition, the offender must have an ignition interlock system installed on his car for at least six months. The court may also authorize a restricted license.

Current penalties for driving on a revoked or restricted license in violation of § 46.2-391 parallel the penalties defined in the proposal. For the penalties to apply, the statute specifies that at least of the convictions on which the license revocation is based must have been committed after July 1, 1999. A first offense, if there is no endangerment to the life, limb or property of another, is punished as a Class 1 misdemeanor and carries a 10-day mandatory minimum sentence. A second or subsequent offense, an offense that endangers the life, limb or property of another, or a new DUI offense committed while driving on a revoked license is punishable by incarceration of 1 to 5 years, 12 months of which is a mandatory minimum term that cannot be suspended. The imposition of the sentence can be suspended in these cases if the offender completes a detention center or diversion center incarceration program.

Data Analysis:

Based on FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, five offenders were convicted of a felony for driving on a revoked license under § 46.2-391(D). All received a state-responsible (prison) term, with a median sentence of 29 months.

According to the FY2001 and FY2002 Local Inmate Data System (LIDS), which contains information on persons confined pre- or post-trial in local jails, 60 offenders were convicted of a misdemeanor for driving on a revoked license (first offense, no endangerment) under § 46.2-391(D). Of these cases, 2% were not sentenced to an active term of incarceration, 93% received a local-responsible (jail) term with a median sentence of 2.3 months, and 5% received a state-responsible (prison) term due to one or more accompanying felony.

For the penalties of § 46.2-391 to apply, at least one of the convictions on which the license revocation is based must have been committed after July 1, 1999, the date these penalties became effective.

Impact of Proposed Legislation:

The proposal may have an impact on state-responsible (prison) bed space needs. Most offenders defined as multiple DUI offenders under the proposal are likely covered by the existing § 46.2-391(B). For these offenders, the length of license revocation and penalties for driving on a revoked license are the same in the proposal as in current law (§ 46.2-391(C)). While it may be possible that differences in wording between the proposal and existing law could result in additional license revocations, the number of additional convictions for driving on a revoked license, if any, 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 and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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