



## Impact Analysis on Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 1217

(Patron – Landes)

Date Submitted: 12/29/03

LD #: 04-6603376

Topic: Admissibility of preliminary analysis of breath to determine alcoholic content of blood

#### Proposed Change:

The proposal amends § 18.2-267 to allow the admission of breath analysis results in prosecution under §§ 18.2-266 and 18.2-266.1 in cases where (1) the person refuses to give samples of blood, breath, or both for chemical testing of alcohol and/or drug content, (2) to rebut testimony regarding differences in blood alcohol content occurring in the period of time between vehicle operation and administration of test, or (3) in cases where an expert witness offers testimony in rebuttal.

#### Data Analysis:

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 for a third or fourth DWI offense. According to the FY2001 and FY2002 Local Inmate Data System (LIDS), which contains information on persons confined pre- or post-trial in local jails, there were 8,353 convicted under the misdemeanor provisions of the same statutes and 3,494 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 active term of incarceration. In addition, according to the FY2001 and FY2002 LIDS data, there were 162 convicted of driving and drinking under the age of 21 (§ 18.2-266.1); most were sentenced to a term of incarceration (85%) with a median jail term of 10.5 days. 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 State Responsible Sentence |
|---|-----------------|--------------------|---------------------|---------------------|-----------------------------------|
| Third conviction within 10 years                | 860             | 10%                | 62%                 | 28%                 | 1.2 yrs.                          |
| Third conviction within 5 years                 | 140             | 10%                | 68%                 | 22%                 | 2.0 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

The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.

| DWI Crimes not defined as felonies but eligible for a prison sentence   | Number of Cases | % No Incarceration | % Local Responsible | % State Responsible | Median Local Responsible Sentence |
|---|-----------------|--------------------|---------------------|---------------------|-----------------------------------|
| Second conviction within 5 years  | 1,058           | 2.6%               | 95.7%               | 1.7%                | 15 days                           |
| Second conviction within 5 to 10 years                                  | 2,319           | 3.5%               | 95.2%               | 1.3%                | 10 days                           |
| Second conviction within 10 years, blood alcohol level .20 to .25       | 73              | 3%                 | 97%                 | 0%                  | 10 days                           |
| Second conviction within 10 years, blood alcohol level greater than .25 | 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 Local Responsible Sentence |
|--|-----------------|--------------------|---------------------|---------------------|-----------------------------------|
| First conviction                                       | 8,254           | 5.1%               | 94.2%               | .7%                 | 10 days                           |
| 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                           |
| Under 21 yrs of age, illegally consume alcohol         | 162             | 14.8%              | 84%                 | 1.2%                | 10.5 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

### Impact of Proposed Legislation:

Proposed changes to § 18.2-267 may have an impact on state-responsible (prison) beds. By allowing the inclusion of breath analysis results in specific circumstances for the prosecution under §§ 18.2-266 and 18.2-266.1, the number of convictions may increase. However, criminal justice databases available to the Commission do not contain information on the number of incidences that may be affected by the proposal. Therefore, the magnitude of the expected impact cannot be computed.

Convictions for the felony provisions of § 18.2-266 are covered by the sentencing guidelines as the primary offense. The misdemeanor provisions of §§ 18.2-266 and 18.2-266.1 are not covered by guidelines as the primary offense but may augment the guidelines recommendation if a covered offense is the most serious at conviction. No adjustment to the sentencing guidelines would be necessary under the proposal.

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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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