



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 667

(Patron – Bell)

Date Submitted: 01/08/04

LD #: 04-6464232

Topic: Drive while intoxicated

Proposed Change:

The proposal amends § 18.2-270 for felony convictions of driving while intoxicated (DWI). This proposal:

- Lowers the blood alcohol level required for additional mandatory minimum penalties to apply in DWI cases -
 - For a first offense, blood alcohol thresholds would drop from .20 to .15 and from .25 to .20 for a five-day and a ten-day mandatory term to apply, respectively;
 - For a second offense within ten years, blood alcohol thresholds would drop from .20 to .15 and from .25 to .20 for a 10-day and a 20-day mandatory term to apply, respectively;
- Increases the mandatory minimum penalty for a third DWI conviction within five to 10 years to 30 days; currently this crime carries a 10-day mandatory minimum;
- Adds a five-day mandatory minimum if the offender was the proximate cause of another receiving bodily injury;
- Expands the list of offenses considered to be prior convictions for the purposes of this section by adding § 18.2-266.1 (underage drinking and driving) and § 18.2-272 (drive on suspended license after DWI); the *Code* currently defines convictions under §§ 18.2-36.1, 18.2-51.4, 18.2-266 and § 46.2-341.24(A) as prior convictions;
- Provides that all mandatory minimum periods of incarceration are to be served consecutively.

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. See the *Background Sentencing Information* below for more details.

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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

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

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

According to the FY2001 and FY2002 LIDS database, there were 687 cases that would be affected by the expansion of prior convictions under the proposal. Of these, 665 convictions for DWI had a prior conviction under § 18.2-266.1 (underage drinking and driving); about 2% were not sentenced to any additional term of incarceration, 84% were sentenced to jail with a median sentence of two months for accompanying crimes, and 14% were sentenced to prison for an accompanying felony. Only 26 of those convicted for DWI had a prior conviction under § 18.2-272 (drive on suspended license after DWI) and all were sentenced to a term of

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incarceration; 88% were sentenced to jail with a median term of one month, while the remaining 12% were sentenced to prison for an accompanying felony.

The Division of Forensic Sciences of the Department of Criminal Justice Services reported performing 29,499 tests for blood alcohol content (BAC) in 2001. Of those, approximately 28% (8,208) were between .15 and .20; under the proposal, these offenders would become eligible for the additional five or ten-day mandatory minimum penalties for having a high blood alcohol level. Similarly, about 7% (2,031) of the BAC test results were between .20 and .25; these offenders would become eligible for the additional 10 or 20-day mandatory minimum penalties if the proposal is adopted.

For 1999, the Department of Motor Vehicles (DMV) reported 28,396 convictions for DWI that were based on alcohol alone. Of those, 82% (23,363) were for a first offense, while 14% (3,894) were for a second offense and 3% (898) were for the third offense (for 40 cases the number of prior DWIs was unknown).

Impact of Proposed Legislation:

Because the proposed legislation creates a new felony crime, expands the definition of prior convictions under this section, and expands the applicability of existing mandatory minimum penalties, the proposal is expected to increase the need for state-responsible (prison) beds. Over the next six years, the net high state-responsible impact would be about 61 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 1,403 beds statewide, for a cost to the state of \$15,288,560 (using FY2002 jail inmate costs) for reimbursement to localities. There would be an additional cost for the localities of \$10,398,471 for the same beds.

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

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

FY05	FY06	FY07	FY08	FY09	FY10
36	54	58	60	60	61

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

FY05	FY06	FY07	FY08	FY09	FY10
877	1133	1332	1415	1424	1403

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$1,368,280 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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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 2003.
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 state-responsible felons were based on forecasts approved by the Secretary's Committee on Inmate Forecasting in August 2003.
3. Cost per prison bed was assumed to be \$22,606 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 FY2002 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$29.81 per day or \$10,889 per year. The local cost was calculated by using the daily expenditure cost of \$54.12 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 \$20.29 per day or \$7,410 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, 2004, 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 state-responsible 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, 2002. For DWI offenses, this rate was 10.48%. Release dates for local-responsible felony convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by felons sentenced in FY2003 to local jails; this rate was 89.7%. 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 FY2003 with no accompanying felony conviction; this rate was 39.66%.
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 to 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. Cases affected by sentence enhancements for BAC levels were adjusted proportionately based on Division of Forensic Sciences information on BAC tests conducted. Each case representing those sentenced for DWI with a BAC of more than .25 was treated as representing 4.58 cases, which reflects the proportional increase in cases by lowering the threshold to more than .20. Similarly, each case representing those sentenced for DWI with a BAC of .20 to .25 was treated as representing 2.77 cases, reflecting the proportional increase by lowering the range to .15 to .20. Each case representing those sentenced for a BAC of .08 to less than .20 was treated as .65 of a case which reflected the proportional decrease by lowering the upper threshold of the range to less than .15.
5. Approximately 13.7% of the cases were treated as having caused a passenger death or injury. These cases were given an additional 5 days.

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