



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 993

(Patron – Hugo)

Date Submitted: 12/29/03

LD #: 04-9498332

Topic: Racing punishable as involuntary manslaughter

Proposed Change:

The proposal amends §§ 18.2-36.1, 46.2-865 and 46.2-867 of the *Code of Virginia* and adds § 46.2-865.1 relating to unlawful racing of a motor vehicle. The proposed legislation expands § 46.2-865, which currently defines racing between two or more vehicles on a highway, driveway or other property open to the public as reckless driving, to include any other type of competition, whether organized or not. The proposal broadens the definition of involuntary manslaughter (§ 18.2-36.1) to include deaths resulting from a race as defined in § 46.2-865. The current § 18.2-36.1 is limited to unintentional deaths resulting from driving under the influence.

The proposed § 46.2-865.1 makes it a Class 6 felony for anyone engaging in a race to cause bodily injury to another due to an accident resulting from such a race. It also provides for the suspension of the offender's driver's license for a period of six months to two years upon conviction. Under the proposal, § 46.2-867 is expanded to provide for the seizure and forfeiture of a motor vehicle if the owner is convicted of racing resulting in injury in violation of the proposed § 46.2-865.1. The current seizure provision covers only the existing racing statute (§ 46.2-865).

Data Analysis:

Based on fiscal year (FY) 2001 and FY2002 Local Inmate Data System (LIDS) data, which contains information on offenders held pre- or post-trial in jail, 21 offenders were convicted of racing under § 46.2-865 (see *Background Sentencing Information* below). All of these offenders were sentenced to jail terms with a median sentence of 10 days. The number of these cases resulting in death or injury cannot be identified.

According to fiscal year (FY) 2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, 47 offenders were convicted of vehicular involuntary manslaughter under § 18.2-36.1(A) as the primary offense in a sentencing event. Of these, 15% were sentenced to probation, 15% received local-responsible (jail) terms and 70% received state-responsible (prison) terms with a median sentence of two years. Furthermore, 22 offenders were convicted of primary offense aggravated vehicular

involuntary manslaughter under § 18.2-36.1(B). All of these offenders were sentenced to prison terms with a median sentence of 7.5 years.

Background Sentencing Information

Misdemeanor Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Local-Responsible Sentence
Racing (§ 46.2-865)	21	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

Felony Crime	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median State-Responsible Sentence
Vehicular involuntary manslaughter (§ 18.2-36.1(A))	47	15%	15%	70%	2.0 yrs.
Aggravated vehicular involuntary manslaughter (§ 18.2-36.1(B))	22	0%	0%	100%	7.5 yrs.

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

Impact of Proposed Legislation:

The proposed legislation may affect the need for state-responsible (prison) bed space. The proposal includes racing as a basis for an involuntary manslaughter conviction. It also creates a new felony for injuring persons while engaging in a race. However, the databases available to the Commission are insufficient to provide information on the number of additional convictions that may accrue under the proposed legislation. The effect of the proposal, therefore, cannot be quantified.

Vehicular involuntary manslaughter and aggravated vehicular involuntary manslaughter are covered by the sentencing guidelines as the primary (most serious) offense in a sentencing event. Racing is not covered as the primary offense but may augment the guidelines recommendation as an additional offense. No adjustment to the sentencing guidelines would be necessary under the proposal.

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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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.