



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 329

(Patron – Stolle)

Date Submitted: 1/15/04

LD #: 04-0876820

Topic: Driving while intoxicated

Proposed Change:

This proposal amends §§ 19.1-120, 19.1-390, 46.2-391 and 46.2-391.2 with respect to offenders charged with driving while intoxicated (DWI) under §§ 18.2-36.1, 18.2-51.4, 18.2-266, 18.2-266.1 and 46.2-341.24.

- The proposal amends § 19.2-120 to expand presumptive denial of bail. Under the proposal, offenders charged with DWI or a violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266.1 or 46.2-341.24 who have a prior conviction for one of those offenses will be presumptively denied bail (this presumption is subject to rebuttal under § 19.2-120). Currently, presumptive denial of bail exists for violent crimes, certain drug sale crimes, certain weapons crimes, and persons charged with a felony who have two prior convictions for violent offenses;
- The proposal, by removing an exemption from the *Code*, requires that misdemeanor arrests for DWI under § 18.2-266 be reported to the Central Criminal Records Exchange (CCRE);
- Under § 46.2-391, the proposal requires that the 12-month mandatory minimum sentence specified in current *Code* for certain offenders who drive while their license is suspended must be run consecutively to any other sentence. This mandatory minimum penalty applies to offenders who drive while their license is suspended following a conviction for DWI or violation of §§ 18.2-36.1, 18.2-51.4, or 46.2-341.24(A) if such driving i) endangers the person or property of another, ii) is in violation of §§ 18.2-36.1, 18.2-51.4, or 46.2-341.24(A), or iii) is the offender's second or subsequent violation for driving on a suspended license under this statute;
- For persons charged under §§ 18.2-51.4, 18.2-266, or 18.2-266.1 who have a prior conviction for a DWI-related offense (§§ 18.2-36.1, 18.2-51.4, 18.2-266.1, or 46.2-341.24), the proposal requires that the license be suspended until trial is completed; and
- The proposal removes the ability of a judge to issue a restricted license for any person convicted under §§ 18.2-51.4, 18.2-266, or 18.2-266.1 whose license has been suspended under § 46.2-391.2.

Data Analysis:

According to fiscal year (FY) 2001 and FY2002 Local Inmate Data System (LIDS) data, there were 2,841 felony and 4,503 misdemeanor convictions under §§ 18.2-36.1, 18.2-51.4, 18.2-266, 18.2-266.1 and 46.2-341.4 who had a prior conviction under the same statutes.

According to FY2000 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 offenders 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.

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

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.

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

Impact of Proposed Legislation:

The proposed legislation may affect state-responsible (prison) bed space needs because the number of persons for whom there is a presumptive denial of bail under § 19.2-120 would increase. For the additional DWI offenders for whom bail is denied, the length of time served in a Department of Corrections (DOC) prison bed will actually be reduced, since these offenders will receive credit for the time spent in a local jail awaiting trial.

Assuming that those subject to presumptive denial of bail under the proposal would have no change in their sentence length, the net impact of the proposal would be a maximum reduction of 480 state-responsible (prison) beds by 2010 (a maximum savings to the state of \$10,861,831).

The bed-space requirements for local-responsible (jail) inmates, however, are expected to increase based entirely on the expansion of presumptive denial of bail. Offenders affected by this aspect of the proposal will spend more time pretrial in the local jails. Based on the same methodology used above, there will be an increased need for at least 984 jail beds statewide, for a cost to the state of at least \$10,718,023 (using FY2002 jail inmate costs) for reimbursement to localities. There would be an additional cost for the localities of at least \$7,293,650 for the same beds. These are minimal estimates due to limitations of historical LIDS data, which may not capture all DWI offenders who would meet the presumptive denial of bail criterion contained in the proposal.

Any impact on community corrections is likely to be negligible. Under the proposal, there may be a brief shift in numbers as offenders are released from their prison and jail sentences closer to their sentencing date, but the effect should be graduated.

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

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.

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

FY05	FY06	FY07	FY08	FY09	FY10
-296	-402	-436	-464	-472	-480

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

FY05	FY06	FY07	FY08	FY09	FY10
744	889	934	967	977	984

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 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 2003.
2. New cases representing local-responsible sentences were based on forecasts developed by the Virginia Criminal Sentencing Commission using the LIDS database.
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 bail

1. The impact of the proposed legislation on bail provisions is treated as being fully implemented when the legislation becomes effective on July 1, 2004.
2. The bed-space impact was derived by estimating the difference between expected dates of release from both jail and prison under current law and under the proposed legislation. Release dates were adjusted to reflect differences in pretrial time served under the two scenarios given identical effective sentences (imposed minus suspended time).

Assumptions relating to sentence lengths

1. The impact of the proposed legislation on criminal provisions, 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 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%.

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.

3. No change in sentence length was assumed; however, it was assumed that the length of pretrial time served in local jails would increase for a portion of the offenders, while post-conviction time served in a state prison bed would decrease.

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