



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 384

(Patron – Norment)

Date Submitted: 1/15/04

LD #: 04-0025104

Topic: Driving while intoxicated

Proposed Change:

This proposal amends §§ 18.2-270, 19.1-120 and 19.1-294.1 with respect to offenders charged with driving while intoxicated (DWI) under § 18.2-266.

The proposal amends § 18.2-270 by eliminating the ten-year time limit specified for third or subsequent DWI offenses. Currently, a third or subsequent conviction for DWI is punishable as a Class 6 felony rather than a Class 1 misdemeanor if it occurred within ten years of the first conviction. The proposal would make any third or subsequent conviction for DWI a Class 6 felony, regardless of the span of time since the first conviction. In addition, eliminating the ten-year time limit would trigger a one-year mandatory minimum term in all fourth-DWI cases, regardless of the time elapsed since the first conviction.

The proposal amends § 19.2-120 to expand presumptive denial of bail. Under the proposal, offenders charged with DWI who have two prior DWI convictions under § 18.2-266 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 also amends § 19.2-294.1 to specify that, for a person convicted under § 18.2-51.4 or § 18.2-266 who is also charged with reckless driving, the court shall dismiss the reckless driving charge (if the offenses grew out of the same act). Currently, when a person is charged with a violation of § 18.2-51.4 or § 18.2-266 and with reckless driving but convicted of only one of the offenses, the court must dismiss the remaining charge (e.g., the *Code* currently does not specify which offense can be dismissed in these circumstances).

Data Analysis:

According to fiscal year (FY) 2001 and FY2002 Local Inmate Data System (LIDS) data, which contain information on offenders held pre- or post-trial in local jails, there were 2,503 felony and 1,669 misdemeanor convictions under § 18.2-266 who had at least two prior convictions under the same statute.

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According to FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, 1,124 offenders were convicted under the felony provisions of §§ 18.2-266/18.2-270 for a third or fourth DWI offense. Nearly all of these offenders (90% to 94%) 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

Impact of Proposed Legislation:

The proposed legislation may affect state-responsible (prison) bed space needs in two ways.

First, the proposed legislation may affect state-responsible (prison) bed space by removing the ten-year time limit for a third or subsequent DWI to be raised to a felony under § 18.2-270 and by expanding the application of the one-year mandatory minimum sentence to any fourth DWI. Because existing databases do not contain sufficient detail regarding the time elapsed between DWI convictions, it is not possible to determine the number of additional offenders who would be eligible for the felony provisions or the number of additional offenders who would be subject to the one-year mandatory minimum penalty if the ten-year time span were removed.

Second, 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. The possible state-responsible (prison) bed space savings accrued under this aspect of the proposal will be offset by any increase in the number of prison inmates associated with the first aspect described above.

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 420 state-responsible (prison) beds by 2010 (a maximum savings to the state of \$9,490,859).

The bed space requirements for local-responsible (jail) inmates are expected to increase based primarily 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. There may be an additional impact on jail beds based on the increased number of persons convicted of the felony provisions of § 18.2-270, but the net impact of this

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is unclear. Furthermore, the number of offenders for which the felony provisions would apply cannot be determined. The reported bed-space impact is derived entirely from the presumptive denial of bail portion of the proposal. Based on the same methodology used above, there will be an increased need for at least 681 jail beds statewide, for a cost to the state of at least \$7,419,062 (using FY2002 jail inmate costs) for reimbursement to localities. There would be an additional cost for the localities of at least \$5,048,696 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.

The net impact of the proposal on community corrections programs cannot be determined.

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
-266	-357	-383	-407	-413	-420

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

FY05	FY06	FY07	FY08	FY09	FY10
479	600	636	663	672	681

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.

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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%.
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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