



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 384 *Amendment in the Nature of a Substitute* *(Patrons Prior to Substitute – Norment et al.)*

Date Submitted: 3/5/04

LD #: 04-1036780

Topic: Drive while intoxicated and administrative license suspension

Proposed Change:

The proposal amends § 18.2-270 and other statutes relating to the penalties and suspension of driver's licenses for driving while intoxicated (DWI). The proposal lowers the blood alcohol level required for additional mandatory minimum penalties to apply in DWI cases -

- For a first offense, an additional two-day mandatory minimum if the blood alcohol level is at least .12 but less than .15;
- For a first offense, blood alcohol thresholds would drop from .20 to .15 and from .25 to .20 for a 5-day and a 10-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;
- Clarifies that convictions under §§ 18.2-36.1, 18.2-51.4, 18.2-266, 46.2-341.24(A) or laws that are substantially similar are considered prior convictions under § 18.2-266 for the purposes of § 18.2-270;
- Clarifies that license revocation for an offender adjudged to be a third offender within ten years also applies for subsequent offenses;
- Requires that a sentence based on a violation of a revoked license under § 46.2-391 that either endangered the life, limb or property of another or entailed a new DWI violation may not be run concurrent with any other sentence;
- Increases the duration of a license suspension for subsequent violations of refusal to submit to a breath test in violation of § 18.2-268.3. If the petition, summons or warrant charges the person with a second offense, the suspension is increased from seven to 30 days, and if the person is similarly charged with a third or subsequent offense, the suspension is increased from seven to 60 days.

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

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misdeemeanor. 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
3 rd conviction within 10 years	860	10%	62%	28%	1.2 yrs.
3 rd conviction within 5 years	140	10%	68%	22%	2.0 yrs.
4 th or subsequent conviction within 10 years	124	6%	21%	73%	1.7 yrs.
Drive on revoked license, endangerment or 2 nd or subsequent*	5	0%	0%	100%	2.4 yrs.

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

*Crime was enacted on July 1, 2000.

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
2 nd conviction within 5 years	1,058	2.6%	95.7%	1.7%	15 days
2 nd conviction within 5 to 10 years	2,319	3.5%	95.2%	1.3%	10 days
2 nd conviction within 10 years, blood alcohol level .20 to .25	73	3%	97%	0%	10 days
2 nd 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
1 st conviction	8,254	5.1%	94.2%	.7%	10 days
1 st conviction, blood alcohol level .20 to .25	62	11%	89%	0%	5 days
1 st 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

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 more than .20 up to .25; these offenders would become eligible for the 10 or 20-day mandatory minimum penalties if the

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proposal is adopted. Also, 24% (7,107) of the BAC tests were between .12 and .15, which would be eligible for the additional two-day mandatory minimum penalty.

Impact of Proposed Legislation:

There are three elements that may affect bed space needs. First, the proposed mandatory minimums in § 18.2-270 are less than one year, which is not expected to impact state-responsible (prison) bed space needs, but will have an impact on local-responsible (jail) bed space. Second, requiring that sentences for driving with a license having been revoked under § 46.2-391 must not be served concurrent with any other sentence could lead to either a prison or jail impact, but the data currently indicates that consecutive sentences are already the practice among judges in Virginia for this crime. Third, increasing the duration of a suspended license may increase the number of prison or jail beds by increasing the time the potential offender is at risk for driving on a suspended license; however, that increase cannot be determined from existing databases. Based on the methodology (assumptions listed below), there will be an increased need for two beds statewide, for a cost to the state of at least \$20,817 (using FY2002 jail inmate costs) for reimbursement to localities. There would be an additional cost borne by the localities of at least \$14,166 for the same beds. No adjustment to the sentencing guidelines would be necessary under the proposal.

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

FY05	FY06	FY07	FY08	FY09	FY10
2	2	2	2	2	2

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 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 misdemeanor convictions were estimated based on

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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. Additional mandatory minimum terms were applied on a proportional basis. Approximately 28% of those sentenced for a first or second DWI conviction (these were convictions without penalty enhancements for .20 BAC or above) were treated as having been sentenced for having a BAC test result between .15 and .20. These cases were given the additional 5 (1st DWI) or 10 (2nd DWI) day mandatory term. About 7% of the BAC results were more than .20 up to .25. The mandatory term applicable in these cases was increased to 10 days (1st DWI) or 20 days (2nd DWI) as proposed. Approximately 24% of those sentenced for a first DWI conviction were treated as having been sentenced for a BAC test result between .12 and .15. These cases were given an additional 2 day mandatory term. These estimates were derived from Division of Forensic Sciences data for the 29,499 tests for blood alcohol content (BAC) performed in 2001.

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