Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 442

Amendment in the Nature of a Substitute
(Patron Prior to Substitute – Rerras)

Date Submitted: 2/3/04 **LD #: 04-1168804**

Topic: Driving while intoxicated and presumption against bail

Proposed Change:
This proposal amends §§ 19.2-120 and 19.2-390 with respect to offenders charged with driving while intoxicated (DWI). 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 two prior convictions for any combination of those offenses within five years of the instant offense 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 proposed § 19.2-390 removes an exemption from the *Code*, and would require that misdemeanor arrests for DWI under § 18.2-266 be reported to the Central Criminal Records Exchange (CCRE).

Data Analysis:
According to fiscal year (FY) 2001 and FY2002 Local Inmate Data System (LIDS) data, there were 2,494 felony and 1,668 misdemeanor convictions under §§ 18.2-36.1, 18.2-51.4, 18.2-266, 18.2-266.1 or 46.2-341.24 for offenders who had two prior conviction under the same statutes.

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 404 state-responsible (prison) beds by 2010 (a maximum savings to the state of $9,136,891).

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 725 jail beds statewide, for a cost to the state of at least $7,899,679 (using FY2002 jail inmate costs) for reimbursement to localities. There would be an additional cost for the localities of at least $5,375,757 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 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.

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

FY05	FY06	FY07	FY08	FY09	FY10
-288	-328	-354	-380	-395	-404

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

FY05	FY06	FY07	FY08	FY09	FY10
546	621	660	693	713	725

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%.
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.

bail07_1168