



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1756 **Floor Amendment in the Nature of a Substitute** **(Patron Prior to Substitute – Janis)**

Date Submitted: 2/23/2005

LD #: 05-3866348

Topic: Manslaughter caused by operation of watercraft

Proposed Change:

This proposal adds § 18.2-36.2 to create two new forms of involuntary manslaughter. First, the unintentional killing of another while operating a watercraft or motorboat under the influence of alcohol or drugs (in violation of subdivisions (ii), (iii), or (iv) of subsection B of § 29.1-738 or similar ordinance) would be a Class 5 felony. Second, an aggravated form where the conduct of the offender was so gross, wanton and culpable as to show reckless disregard for human life, would be punishable by up to 20 years in prison, of which one year is a mandatory minimum. In addition, any person convicted under the proposed subsection would be ordered not to operate a watercraft or motorboat on waters of the Commonwealth for at least five years. A petition would need to be filed for the right to operate a watercraft or motorboat again. The proposal also amends §§ 46.2-208 and 46.2-382 to require the court and Department of Motor Vehicles to maintain records of convictions under the proposed § 18.2-36.2.

Currently, under § 29.1-738, it is a Class 1 misdemeanor to operate a watercraft while under the influence of alcohol or drugs. Under § 29.1-740, failure to stop and render assistance when a watercraft has been involved in a collision is a Class 1 misdemeanor; the penalty is raised to a Class 6 felony in cases of serious injury or death.

Analysis:

According to fiscal year (FY) 2002 and FY2003 Pre/Post-Sentence Investigation (PSI) data, one offender was convicted of a felony for involuntary manslaughter under § 18.2-36 with an additional boating offense. The additional offense was a felony for a hit and run while boating that resulted in serious injury or death (§ 29.1-740). This offender was sentenced to nine years in prison. For this case, the data do not indicate that the offender was also convicted of boating under the influence (in violation of § 29.1-738). As a Class 1 misdemeanor, the boating under the influence charge could have been resolved in general district court, prior to trial in circuit court for involuntary manslaughter; however, there is no case information on this offender in the general district court data.

Overall, 71% of offenders convicted of involuntary manslaughter under § 18.2-36.1 receive a state-responsible (prison) sentence (median sentence of just over two years). When the enhanced felony punishment is applied for cases in which the offender showed a reckless

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.

disregard for human life, the portion of offenders receiving a prison term reaches 80% and the median prison sentence increases to 7.5 years.

Background Sentencing Information

Felony Crimes	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median State-Responsible Sentence
Involuntary manslaughter (vehicular) - § 18.2-36.1	55	10.9%	18.2%	70.9%	2.1 yrs.
Involuntary manslaughter (vehicular) – reckless disregard for human life § 18.2-36.1	30	16.7%	3.3%	80.0%	7.5 yrs.

Data Source: Virginia Criminal Sentencing Commission analysis of FY2002 and FY2003 Pre/Post-Sentence Investigation (PSI) database

Impact of Proposed Legislation:

The proposed legislation may increase the state-responsible (prison) bed space needs of the Commonwealth. Currently, individuals who unintentionally cause the death of another while boating under influence of alcohol or drugs can be prosecuted for involuntary manslaughter under § 18.2-36 (a Class 5 felony); however, the enhanced penalty of up to 20 years for reckless disregard of human life provided in § 18.2-36.1 is not available. By creating § 18.2-36.2, to parallel § 18.2-36.1, for unintentional death resulting from boating under the influence, the proposal makes this enhanced penalty available in boating as well as drunk driving cases. While the number of cases affected by the proposal and its effect on judicial sentencing practices cannot be determined, the impact on state-responsible (prison) bed space is expected to be small.

As the proposal defines a new crime, § 18.2-36.2 would not be covered by Virginia's sentencing guidelines when it is the primary (most serious) offense in a case; however, convictions under the proposed statute may augment the guidelines recommendation if a covered offense is the most serious at conviction. 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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