



## Impact Analysis on Proposed Legislation

*Virginia Criminal Sentencing Commission*

### **House Bill No. 1896** **Amendment in the Nature of a Substitute** **(Patron Prior to Substitute – Carrico)**

**Date Submitted:** 2/17/2005

**LD #:** 05-5577264

**Topic:** Driving under the influence of certain drugs

#### **Proposed Change:**

The proposal amends §§ 18.2-266, 29.1-738, and 46.2-341.24 to specify that prohibition of driving a motor vehicle, watercraft, or commercial vehicle while intoxicated would include driving with 0.02 milligrams of cocaine per liter of blood, 0.1 milligrams of methamphetamine per liter of blood, 0.01 milligrams of phencyclidine per liter of blood, or 0.1 milligrams of 3,4-methylenedioxymethamphetamine (ecstasy) per liter of blood.

Currently, it is a violation of §§ 18.2-266, 29.1-738, and 46.2-341.24 to drive a motor vehicle, watercraft, or commercial vehicle (1) with a blood alcohol concentration of .08 percent or more, (2) while under the influence of alcohol, (3) while under the influence of any narcotic drug or self-administered intoxicant to a degree which impairs one's ability to operate a vehicle, or (4) while under the combined influence of alcohol and drugs to any degree which impairs one's ability to drive.

If the test results indicate the presence of a drug other than alcohol, currently the test results are only admissible if other competent evidence has been presented relating to the drug's impairment of the accused's ability to drive. Under the proposal, this requirement for additional evidence of impairment would not apply to prosecution of § 18.2-266 (v), driving a motor vehicle, watercraft, or commercial vehicle while intoxicated would include driving with 0.02 milligrams of cocaine per liter of blood, 0.1 milligrams of methamphetamine per liter of blood, 0.01 milligrams of phencyclidine per liter of blood, 3,4- methylenedioxymethamphetamine per liter of blood.

#### **Analysis:**

The penalties for violation of § 18.2-266 are specified in § 18.2-270. Information on the offenses punishable with a maximum penalty of one year or less is based on fiscal year (FY) 2003 and FY2004 Local Inmate Data System (LIDS) data. There were 7,566 cases of driving while intoxicated, first offense. Of those, nearly 97% received a local-responsible (jail) sentence with median incarceration time of approximately 11 days. Less than 1% (17) of the offenders received a state-responsible (prison) sentence.

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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.

There were 2,421 second convictions of driving while intoxicated within five to ten years. More than 98% received a local-responsible (jail) sanction, with the median effective sentence of 15 days. Of the remainder of the cases, 28 received no active term of incarceration and 12 received a state-responsible (prison) sentence.

Information on the felony driving while intoxicated offenses is based on fiscal year (FY) 2002 and 2003 Pre/Post-Sentence Investigation (PSI) data. There were 1,233 convictions for driving while intoxicated, third within ten years. Of those, 6% received no active term of incarceration, nearly 72% received a local-responsible (jail) sentence, and 22% received a state-responsible (prison) sentence. The median state responsible (prison) sentence was 1.5 years. There were 289 convictions for driving while intoxicated, third conviction within 5 years. Of those, 6% received no active incarceration, 74% received a local-responsible (jail) sentence and 20% received a state-responsible (prison) sentence. The median state responsible (prison) sentence was 1.5 years.

There were 171 convictions for fourth or subsequent driving while intoxicated convictions within ten years. Of those, 5% received no active incarceration, 20% received a local-responsible (jail) sentence, and 75% received a state-responsible (prison) sentence. The median state responsible (prison) sentence was 1.3 years.

According to fiscal year (FY) 2003 and FY2004 Local Inmate Data System (LIDS) data, there were five convictions under § 29.1-738 for operating a boat while intoxicated. All five received a local-responsible (jail) sentence with a median incarceration period of one month.

The penalties for violation of § 46.2-341.24 are specified in § 46.2-341.28. Information on the offenses punishable with a maximum penalty of one year or less is based on fiscal year (FY) 2003 and FY2004 Local Inmate Data System (LIDS) data. There were 150 cases of driving a commercial vehicle while intoxicated, first offense. Of those, nearly 95% received a local-responsible (jail) sentence with median incarceration time of 10 days. Fewer than 5% received no active incarceration and only one offender received a state-responsible (prison) sentence.

There were 25 second convictions of driving a commercial vehicle while intoxicated within five years (mandatory minimum incarceration term of 5 days). The majority (92%) received a local-responsible (jail) sanction, with the median effective sentence of ten days. Of the remaining cases, one received no active term of incarceration and one received a state-responsible (prison) sentence.

Twenty-one cases involved second convictions of driving a commercial vehicle while intoxicated within five to 10 years (mandatory minimum incarceration term of 2 days). The majority (95%) received a local-responsible (jail) sanction, with the median effective sentence of approximately one month. Only one received a state-responsible (prison) sentence.

During the same time period, there were 119 third convictions of driving a commercial vehicle while intoxicated within five years (mandatory minimum incarceration term of 30 days). The majority (92%) received a local-responsible (jail) sanction, with the median effective sentence of approximately 2 months. Of the remaining cases, 2% received no active term of incarceration and 6% received a state-responsible (prison) sentence.

Only 6 cases involved third convictions of driving a commercial vehicle while intoxicated within five to ten years (mandatory minimum incarceration term of 10 days). Three received a local-responsible (jail) sanction, with the median effective sentence of 5.6 months. One received no active term of incarceration and two received a state-responsible (prison) sentence.

According to data from the Department of Motor Vehicles, of the 27,690 convictions in CY2003 for DUI, 398 (1.8%) involved both drugs and alcohol, while 147 (.5%) involved drugs only. There was no indication of the amount or type of drug involved in any of these cases.

**Impact of Proposed Legislation:**

The proposed legislation may increase the correctional bed space needs of the Commonwealth. However, the databases available to the Commission are insufficiently detailed to identify the number of cases that might be affected. The current statute specifies that driving under the “combined influence of alcohol and any drug or drugs to a degree which impairs his ability to drive or operate any motor vehicle, engine or train safely” is unlawful; some of the cases affected by the proposal may have been prosecuted under the existing statute.

Felony convictions under § 18.2-266 are covered by Virginia’s sentencing guidelines as the primary (or most serious) offense. Misdemeanors under §§ 18.2-266, 29.1-738, and 46.2-341.24 are not covered by the guidelines but 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.

The Department of Juvenile Justice (DJJ) reports that the impact of the proposal on Juvenile Correctional Center (JCC) bed space needs cannot be determined.

**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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