



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 1182

(Patron – Carrico)

LD#: 06-4424308

Date: 12/27/2005

Topic: Driving under the influence of tetrahydrocannabinol (THC)

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
Cannot be determined
- **Local Adult Correctional Facilities:**  
Cannot be determined
- **Adult Community Corrections Programs:**  
Cannot be determined

- **Juvenile Correctional Centers:**  
None (\$0)
- **Juvenile Detention Facilities:**  
None (\$0)

#### Summary of Proposed Legislation:

The proposal amends § 18.2-266 to specify that prohibition of driving while intoxicated (DUI) would include driving with 0.003 milligrams of tetrahydrocannabinol (THC) per liter of blood. Currently, there is no specific amount of THC per liter of blood that would establish guilt under § 18.2-266.

#### Analysis:

Under § 18.2-266, there are three misdemeanors, three special classed and three felony crimes dealing with driving while intoxicated. Information on the misdemeanor and special classed offenses 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 (Class 1 misdemeanor). Of those, nearly 97% received a local responsible (jail) sentence with median incarceration time of approximately 11 days. Less than one percent (17) of the offenders received a state responsible (prison) sentence for sentencing events involving this offense. There were 112 offenses of driving while intoxicated, blood alcohol level between .20 and .25 (Class 1 misdemeanor). Of those, all were sentenced to local responsible (jail) incarceration, with a median effective sentence of 6 days, in addition to any time served. Second convictions within ten years with a blood alcohol level of .20 to .25 totaled 100 cases, all which were sentenced to local responsible (jail) incarceration with a median effective term of ten days (special classed offense). There were 113 convictions of driving while intoxicated with a blood alcohol level of more than .25 (Class 1 misdemeanor). More than 98% of those received a local responsible (jail) sentence, with a median effective incarceration of nearly ten days in addition to any credit for time served. The remaining offenses did not result in a sentence more than time already served. Second convictions within ten years with a blood alcohol level greater than .25 totaled 33 cases (special classed offense). Nearly 94% of those cases received a local responsible (jail) sentence with the median length of incarceration of 30 days. The remainder received a state responsible (prison) sentence. Finally, there were 2,421 second convictions of driving while intoxicated within five to ten years (special classed offense). More than 98% received a local incarceration (jail) sanction, with the median effective sentence of 15 days. Of the remainder of the cases, 28 received no additional new time 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 conviction within ten years. Of those, 6% received no additional incarceration time other than time served, nearly 72% received a local responsible (jail) sentence, and 22% received a state responsible (prison) sentence. The median state responsible (prison) was 1 year 6 months. There were 289 convictions for driving while intoxicated, third conviction within 5 years. Of those, 6% received no incarceration other than time served, 73.4% received a local responsible (jail) sentence and 20.4% received a state responsible (prison) sentence. The median state responsible (prison) sentence was one year six months. There were 171 convictions for fourth or subsequent driving while intoxicated convictions within ten years. Of those, 5% received no incarceration other than time served, 20% received a local responsible (jail) sentence, and 75% received a state responsible (prison) sentence. The median state responsible (prison) sentence was one year four months.

In .5% of all driving under the influence cases (FY2003 and FY2004 Local Inmate Data System (LIDS)) an additional offense of possession or distribution of marijuana. It is strongly suspected that this is an under estimation of the number of drivers who were under the influence of marijuana. Furthermore, the level of THC in the offenders convicted under § 18.2-266 cannot be determined from available databases. The National Highway Traffic Safety Administration estimated in 2004 that 10 to 22 percent of drivers involved in crashes were under the influence of drugs, often in combination with alcohol.

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### **Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposed legislation may have an impact on the bed space needs of the Commonwealth. However, the databases available to the Commission are insufficiently detailed to identify the number of cases that have a 0.003 milligrams or higher level of THC per liter of blood. Moreover, the current statute already 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. Accordingly, some of the potential cases accrued under this proposal may already be prosecuted under the existing statute.

**Local adult correctional facilities.** If there is an impact on state-responsible bed space, there will be a partially offsetting impact on local-responsible (jail) bed space. The state’s share of a jail inmate is about half (52%) of the cost for a prison inmate for the same length sentence.

**Adult community corrections programs.** Because the proposal may result in additional offenders placed on community supervision (or lengthier supervision periods for offenders already in the community), it may have an impact on community corrections resources. The potential impact on adult community corrections cannot be determined.

**Virginia’s sentencing guidelines.** Most of the felony convictions under § 18.2-266 are covered by the sentencing guidelines. No adjustment to the guidelines is necessary under the proposal.

**Juvenile correctional centers.** According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase juvenile correctional center (JCC) bed space needs.

**Juvenile detention facilities.** The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

**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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

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