



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 1492

(Patron – Valentine)

LD#: 06-9836527

Date: 1/23/2006

Topic: Driving a commercial motor vehicle under the influence

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$930,521 (39 beds)
- **Local Adult Correctional Facilities:**  
-28,809 (-4 beds)
- **Adult Community Corrections Programs:**  
Cannot be determined

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

#### Summary of Proposed Legislation:

The proposal amends § 46.2-341.28 to specify that any conviction for driving a commercial vehicle while intoxicated (DUI), is punishable as specified in § 18.2-270 of the *Code of Virginia*. §18.2-270 establishes the penalty structure for any other type of motor vehicle, other than a commercial vehicle. Under the proposal, a third or subsequent conviction would be elevated to a Class 6 felony, mandatory minimums would apply for a first conviction if the offender's blood alcohol level was .15 or higher, and mandatory minimums would increase for both second and third convictions.

Currently, it is a Class 1 misdemeanor to drive a commercial vehicle while under the influence. The sentence range for a second conviction of driving a commercial vehicle under the influence is one month to one year. If the second offense occurred within less than five years of the first, there is a mandatory term of five days and two days if the offense is within five years to ten years of the first. The sentence range for a third or subsequent conviction is two months to one year. The mandatory minimum is increased to thirty days if the third or subsequent offense occurred within less than five years of the previous DUI and to ten days if the offense occurred between five to ten years of the prior driving while intoxicated offense.

#### Analysis:

According to fiscal year (FY) 2003 and FY2004 Local Inmate Data System (LIDS) data, there were 315 convictions of driving under the influence involving a commercial vehicle. Of the total, 150 were for the first offense conviction of driving under the influence. All but seven received a local-responsible (jail) sanction with a median sentence of 10 days. Twenty-four offenders convicted of a second offense of driving a commercial vehicle under the influence, within less than 5 years of the first, were also sentenced to a local-responsible (jail) term with a median sentence of 10 days; one offender was not sentenced to any additional time. Another 20 offenders were convicted of a second offense of driving a commercial vehicle under the influence, within five to ten years of the first. All received a local-responsible (jail) sanction with a median sentence of thirty days. All but three offenders were sentenced to additional time for a third or subsequent driving a commercial vehicle under the influence. The majority were sentenced to incarceration for a third or subsequent driving a commercial vehicle

under the influence, within less than five years of the previous offense. All 113 offenders received a local-responsible (jail) term with a median sentence of sixty days. Another four offenders were convicted of a third offense within five to ten years and were sentenced to nearly seven months in a local-responsible (jail) facility.

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.

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### Impact of Proposed Legislation:

**State adult correctional facilities.** By making third or subsequent convictions for driving a commercial vehicle a felony, there will be an impact on the state-responsible (prison) bed space needs of the Commonwealth; the estimated increase is 39 additional beds by the year 2012.

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

FY07	FY08	FY09	FY10	FY11	FY12
14	25	30	34	37	39

**Local adult correctional facilities.** The proposal also has elements that will affect local-responsible (jail) bed space needs. The effects some of these elements have on bed space needs offset the effects of others. The estimated combined impact is a reduced need for three beds statewide; this represents a savings of \$28,809 for the state, and \$26,558 for localities.

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

FY07	FY08	FY09	FY10	FY11	FY12
0	-2	-2	-3	-3	-3

**Adult community corrections programs.** There will likely be an impact on the need for adult community corrections programs, but the magnitude cannot be determined.

**Virginia's sentencing guidelines.** Convictions under §§ 18.2-48, 18.2-61, 18.2-67.1 and 18.2-67.2 are covered by Virginia's sentencing guidelines. The proposed mandatory minimums would be covered by the Commission's policy regarding mandatory minimum sentences. Convictions for other crimes affected by the proposal are not covered as the primary (most serious) offense at conviction, but will augment the guideline recommendation if the most serious offense at conviction is a covered offense. No adjustment to Virginia's sentencing 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 mandatory minimums are not applicable to juvenile offenders. Also, the Department's Length of Stay (LOS) guidelines will not be affected by the proposed changes.

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

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$930,521 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 2004.
2. New cases representing state-responsible sentences were based on forecasts developed for the Secretary's Committee on Inmate Forecasting and approved in July 2005.
3. Cost per prison bed was assumed to be \$23,966 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 FY2004 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$26.03 per day or \$9,506 per year. The local cost was calculated by using the daily expenditure cost of \$54.37 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 \$23.99 per day or \$8,763 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 on criminal provisions, which would be effective on July 1, 2006, 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 were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2004; for

driving under the influence offenses the rate was 11.96%. 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 local-responsible 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 to local jails; this rate was 39.7%.

3. To gauge the impact, two types of sentence adjustments were made:
  - a. For the mandatory minimums that apply to a first or second conviction when the blood alcohol content (BAC) reaches certain thresholds, 26.1% of the cases were treated as though the five (1<sup>st</sup>) or ten (2<sup>nd</sup>) day mandatory minimum applied for a BAC of .15 to less than .2, and 9.6% of the cases were treated as though the 10 (1<sup>st</sup>) or 20 (2<sup>nd</sup>) day mandatory minimum applied for a BAC of .2 or more; these were the proportions for test results establishing BAC level in 2001 (only .08 or above) as reported by the former Division of Forensic Science.
  - b. For the change in penalty structure with an increased mandatory minimum for third or subsequent convictions, stand-in sentences were randomly drawn from persons convicted under the existing § 18.2-270 for third convictions or fourth or subsequent convictions. For those crimes being elevated to a felony, it was assumed that the proportion of convictions for commercial drivers under the influence would be distributed the same as non-commercial drivers.

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