



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 392

#### *Amendment in the Nature of a Substitute*

#### *(Patron Prior to Substitute – Stolle)*

**LD#:** 06-1389820

**Date:** 1/25/2006

**Topic:** Drive on suspended or revoked license, third or subsequent offense

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$6,913,634 (288 beds)
- **Local Adult Correctional Facilities:**  
\$212,270 (22 beds)
- **Adult Community Corrections Programs:**  
None (\$0)

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

#### Summary of Proposed Legislation:

The proposal amends §§ 46.2-301 and 46.2-302 to increase the penalty for a third or subsequent driving on a suspended or revoked license from a Class 1 misdemeanor to a Class 6 felony. Currently, there is also a 10-day mandatory minimum term of incarceration for a third or subsequent violation of § 46.2-301; that provision does not change under the proposal.

#### Analysis:

According to fiscal years (FY) 2003 and 2004 Local Inmate Data System (LIDS) data, there were 1,299 persons held pre- or post-trial who were convicted of a third or subsequent driving on a suspended or revoked license under § 46.2-301. The median local-responsible (jail) sentence was one month.

According to the same two years of LIDS data, there were 13 persons held pre- or post-trial who were convicted of a third or subsequent driving on a suspended or revoked license under § 46.2-302. The median jail term was one month.

#### Impact of Proposed Legislation:

**State adult correctional facilities.** By increasing the penalty from a Class 1 misdemeanor to a Class 6 felony, the proposal will increase the state-responsible (prison) bed space needs. The impact is estimated to be 288 prison beds by FY2012.

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

FY07	FY08	FY09	FY10	FY11	FY12
131	229	264	278	284	288

**Local adult correctional facilities.** Using the same methodology, the impact of the proposal on local-responsible (jail) bed space needs is estimated to be 22 beds by FY2012 (state costs: \$212,270; local costs: \$195,679).

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

FY07	FY08	FY09	FY10	FY11	FY12
22	23	23	23	23	22

**Adult community corrections programs.** The number of offenders placed in adult community corrections programs is not expected to change; however, the timing of the need may be delayed while the offender serves a longer sentence for the felony conviction.

**Virginia's sentencing guidelines.** Convictions under § 46.2-301 are not covered by Virginia's sentencing guidelines as the primary offense (most serious) 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.

**Juvenile correctional centers.** The Department of Juvenile Justice (DJJ) reports that, if the proposal is enacted, the minimum confinement assigned under the Department's Length of Stay (LOS) guidelines would change from a range of 3 to 6 months up to 6 to 12 months. Additionally, because the proposal increases the penalty for an existing crime from a misdemeanor to a felony, a juvenile adjudicated for this crime would be eligible automatically for commitment, since existing *Code* specifies that a juvenile is eligible for commitment if he is adjudicated for a felony, has a prior felony adjudication or has accumulated a total of four Class 1 misdemeanor adjudications. DJJ does not believe that the proposal will result in an increase of 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.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation \$6,913,634 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 2005.
2. New cases representing state-responsible sentences were based on the admissions forecast as approved by the Secretary's Committee on Inmate Forecasting 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, which would be effective on July 1, 2006, is phased in to account for case processing time.

2. The state-responsible 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 habitual traffic offenders, this rate was 12.07%.
3. To gauge the impact, sentences were randomly selected from non-violent Class 6 felony offenses (sentences for offenses governed by mandatory minimums were removed to avoid artificially inflating the magnitude of the impact). For the portion of the analysis involving § 46.2-301, sentences below the mandatory minimum required by proposed offense were adjusted to reflect the 10-day mandatory minimum.

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