



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2329

(Patron – Gilbert)

LD#: 07-7764306

Date: 12/22/2006

Topic: Driving while intoxicated; subsequent offense

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$4,118,251 (160 beds)
- **Local Adult Correctional Facilities:**
Save \$16,582 (-2 beds)
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
None
- **Juvenile Detention Facilities:**
None

Summary of Proposed Legislation:

The proposal amends § 18.2-270 to increase the mandatory minimum penalties for third-offense driving while intoxicated (DWI) convictions under § 18.2-266. Under the proposal, the mandatory minimum sentence for a third DWI within 10 years is increased from 90 days to 6 months; the minimum sentence required for a third DWI within 5 years is increased from 6 months in jail to 1 year in prison.

Analysis:

According to fiscal year (FY) 2005 and FY2006 Sentencing Guidelines (SG) data, there were 1,405 convictions for third offense DWI under § 18.2-266. Sentencing information is presented in the table below.

FY2005 and FY2006 Felony Sentencing Information

Felony Offense	Total Cases	Disposition				
		No Active Incarceration	Local-Responsible (Jail)		State-Responsible (Prison)	
		% of Cases	% of Cases	Median Sentence	% of Cases	Median Sentence
DWI 3 rd within 10 years	1,055	2%	85%	4 mos.	13%	1.3 yrs.
DWI 3 rd within 5 years	350	2%	80%	6 mos.	18%	1.1 yrs.

Note: Sentence data reflects the total effective sentence (imposed less suspended time) given for all offenses in the same sentencing hearing. The median sentence is the middle value, above and below which lie an equal number of cases.

Data Source: Sentencing Guidelines (SG) database.

Impact of Proposed Legislation:

State adult correctional facilities. Increasing the mandatory minimum penalties for third-offense DWI convictions under § 18.2-266 is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. The impact on state-responsible (prison) beds is estimated to be 160 beds by FY2013. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$4,118,251.

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

FY08	FY09	FY10	FY11	FY12	FY13
64	136	147	152	158	160

Local adult correctional facilities. The proposal will likely reduce the future need for local-responsible (jail) beds, as some offenders who historically received a jail sentence would be required to serve a prison term under the proposal. The impact on local-responsible (jail) beds is estimated to be a net reduction of two beds statewide by FY2013 (state savings: \$16,582; local savings: \$15,332).

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

FY08	FY09	FY10	FY11	FY12	FY13
-1	-1	-1	-1	-1	-2

Adult community corrections resources. The proposal is not expected to increase the need for adult community corrections resources and will delay the need for services for offenders affected by the proposal, as they will be required to serve longer mandatory incarceration terms.

Virginia's sentencing guidelines. Felony convictions under § 18.2-266 are covered by the sentencing guidelines. No adjustment to the guidelines would be 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 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 is \$4,118,251 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 2006.
2. New cases representing state-responsible sentences were based on forecasts developed for the Secretary's Committee on Inmate Forecasting and approved in July 2006.
3. Cost per prison bed was assumed to be \$25,709 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 FY2005 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.37 per day or \$10,362 per year. The local cost was calculated by using the daily expenditure cost of \$59.24 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 \$26.23 per day or \$9,581 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

5. The impact of the proposed legislation, which would be effective on July 1, 2007, is phased in to account for case processing time.

Assumptions relating to sentence lengths

1. 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, 2005. For felony DWI violations, this rate was 12.23%.
2. It was assumed that offenders convicted of a third-offense DWI who received a sentence less than the proposed mandatory minimum term in the past will receive a sentence equal to the proposed mandatory minimum if the proposal is enacted.

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