

Department of Planning and Budget 2007 Fiscal Impact Statement

1. Bill Number HB 2875

House of Origin	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron McEachin

3. Committee Appropriations

4. Title Driving while intoxicated

5. Summary/Purpose:

Under current law, a third or subsequent offense of driving while intoxicated (DWI), committed within a 10-year period, is a Class 6 felony. For the third offense committed during the 10-year period, the law provides for a mandatory minimum sentence of 90 days in jail, unless the offenses were committed during a five-year period, in which case the mandatory minimum sentence is six months. For a fourth or subsequent offense committed within ten years, the mandatory minimum sentence is one year in prison.

The proposed legislation would eliminate the provision that the third or subsequent offenses occur within a ten-year period.

6. Fiscal Impact: Preliminary. See Item 8.

7. Budget amendment necessary: No.

8. Fiscal implications:

The Virginia Criminal Sentencing Commission was unable to determine the impact of this proposal on state-responsible (prison) bed space pursuant to §30-19.1:4 of the Code of Virginia because the proposal would criminalize behavior that is not currently defined as a criminal act, and data on such activity does not exist. Consequently, the number of individuals who could be affected by the proposal is unknown.

Although the possible impact on jail and prison beds cannot be determined, it could be significant. The Sentencing Commission reports that, during FY 2005 and FY 2006, there were 1,055 persons convicted of a third DWI offense within a ten-year period. Because these offenders could have been convicted of a separate offense of DWI within five years, it is assumed that these 1,055 offenses occurred between year 5 and year 10 of the 10-year period set out in statute. Furthermore, during that period, 192 offenders were convicted of a fourth offense within 10 years.

The distribution of those 1,055 along the 5-10 year period is not known. However, assuming that they are evenly spread over that time frame, that would mean that

approximately 200 offenders were convicted of a third offense within a period of 9-10 years. Another 200 were convicted of a third offense within a period of 8-9 years. Under current law, if any of those 400 three-time offenders were to be convicted for a fourth offense that occurred beyond the 10-year period, he could not be charged with a Class 6 felony carrying a mandatory minimum sentence of one year in prison. Under the proposed law, it would not matter when the fourth or subsequent offense occurred in order for the mandatory minimum sentence to be applicable.

Because, according to the Sentencing Commission, more than 80 percent of those convicted of a fourth DWI offense within 10 years receive a prison sentence, it is reasonable that the additional exposure to a prison sentence for repeat DWI offenders that is provided under the proposed legislation could result in a significant number of additional offenders sentenced to prison.

9. Specific agency or political subdivisions affected:

Department of Corrections

10. Technical amendment necessary: None.

11. Other comments: None.

Date: 01/28/2007 / rwh

Document: g:\legis\fis-07\hb2875.doc