



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1221

(Patron – Bowling)

LD#: 08-0567436

Date: 1/3/2008

Topic: Commercial drivers; implied consent to drug and alcohol tests

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 adds § 46.2-341.24:1 to the *Code of Virginia*. Under the proposal, any person operating a commercial vehicle who is involved in an accident that must be reported pursuant to § 46.2-373 would be deemed, as a condition of operating a commercial motor vehicle upon a highway in the Commonwealth, to have consented to have samples of his blood, breath, or both, taken for a chemical test to determine the alcohol and drug content of his blood. The provisions of the article would apply mutatis mutandis as if the driver had been arrested for driving a commercial vehicle with any alcohol in his blood (§ 46.2-341.31) or driving a commercial motor vehicle while intoxicated (§ 46.2-341.24).

The proposal states that, when a commercial vehicle is involved in an accident that must be reported, law enforcement must treat the driver as though he is reasonably suspected of driving while intoxicated (DWI) or of having alcohol in his blood. Law enforcement is directed to request the driver provide a sample of his breath and/or blood for testing.

Analysis:

According to Local Inmate Data System (LIDS) data for 2005 and 2006, 47 offenders held pre- or post-trial in jail were convicted of a misdemeanor for driving a commercial vehicle while intoxicated (1st conviction) or driving a commercial vehicle with a blood alcohol content greater than or equal to .04 (§ 46.2-341.24). Nearly all (87%) of these offenders were given a local-responsible (jail) term, for which the median sentence was 20 days.

LIDS data also reveal 224 felony cases in 2005 and 2006 involving a second or third conviction for driving a commercial vehicle while intoxicated (§ 46.2-341.24). The vast majority of these offenders (88%) were sentenced to a local-responsible (jail) term with a median sentence of 1.3 months. Another 6% were sentenced to a state-responsible (prison) term (median sentence of 1.7 years).

The data presented here are likely to be undercounts of the true number of persons convicted as a result of driving a commercial vehicle while intoxicated. Analysis has revealed that these offenders are often charged and convicted under the general DWI provisions found in §§ 18.2-266 and 18.2-270; these

statutes specify more and longer mandatory minimum sentences for essentially the same behavior (except for the commercial driver requirement under § 46.2-341.24).

Impact of Proposed Legislation:

State adult correctional facilities. Adding § 46.2-341.24:1 may increase the future state-responsible (prison) bed space needs of the Commonwealth. The number of additional felony convictions that may result from the proposal cannot be estimated; therefore, the impact of the proposal on prison bed space cannot be determined.

Local adult correctional facilities. The proposal may increase local-responsible (jail) bed space needs; however, the magnitude of the impact cannot be determined.

Adult community corrections programs. The proposal may increase the need for adult community corrections resources, but the magnitude of the impact cannot be determined.

Virginia's sentencing guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice, the proposal is not expected to increase juvenile correctional center 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 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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