



## Fiscal Impact Statement for Proposed Legislation

### *Virginia Criminal Sentencing Commission*

#### House Bill No. 224

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

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

**LD#:** 08-1560472

**Date:** 2/21/2008

**Topic:** Driving while intoxicated

#### **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:**

This proposal amends §§ 18.2-266(iii) and 46.2-341.24(iii) to expand the crime of driving while intoxicated (DWI). Currently, the definition of driving while intoxicated includes driving while under the influence of any narcotic drug or any other self-administered intoxicant or drug (or any combination of such drugs) to a degree that impairs safe operation of the vehicle. The proposal removes the requirement that the intoxicant or drug be self-administered if the person knows or should have known that the intoxicant(s) had been administered to him. The proposal also amends §§ 46.2-304 (operation of farm equipment) and 46.2-411 (reinstatement of suspended licenses) to remove the term “self administered” from these provisions. Sections 18.2-266 and 46.2-341.24 were last amended in 2005, when clause (v), relating to blood concentration of particular drugs, was added.

#### **Analysis:**

Based on data from the Local Inmate Data System (LIDS), there were 13,611 misdemeanor convictions in 2005 and 2006 for a first offense of driving while intoxicated (including commercial vehicles) or driving with a child while intoxicated (§§ 18.2-266 and 46.2-341.24). Nearly all offenders (89%) were sentenced to a local-responsible (jail) term. For offenders who were sentenced to jail, the median sentence length was roughly five days.

During the same two-year period, there were 6,252 convictions for a second offense of driving while intoxicated or driving with a child while intoxicated, or a second or third offense of driving a commercial vehicle while intoxicated (§§ 18.2-266 and 46.2-341.24). Nearly all (91%) received a jail term, for which the median sentence was 20 days.

According to fiscal year (FY) 2006 and FY2007 Pre/Post Sentence Investigation (PSI) data, there were 1,067 felony convictions under § 18.2-266 for a third offense of driving while intoxicated or driving with a child while intoxicated during this time period. More than half (56%) of the offenders were sentenced to a local-responsible (jail) term with a median sentence of six months. More than one-third

(34%) were sentenced to a state-responsible (prison) term. For offenders sentenced to prison, the median sentence length was 1.5 years.

Finally, PSI data for FY2006 and FY2007 indicate that 184 offenders were sentenced for a fourth or subsequent offense of driving while intoxicated or driving with a child while intoxicated. Nearly all (92%) were sentenced to a state-responsible (prison) term with a median sentence of 1.5 years.

Existing databases do not provide sufficient detail to allow for analysis specifically for driving under the influence of narcotics or other drugs in violation of clause (iii) of §§ 18.2-266 and 46.2-341.24.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By removing the requirement that drugs be self-administered for DWI provisions to apply, the proposal 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 resources.** Because the proposal may result in additional felony offenders on community supervision, there may be an impact on state community corrections resources; however, full cost of the impact on adult community corrections cannot be determined.

**Virginia's sentencing guidelines.** The guidelines cover felony DWI offenses defined in § 18.2-266. No adjustment to the sentencing 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.

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**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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