



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 221

Amendment in the Nature of a Substitute

(Patron Prior to Substitute – McDougle)

LD#: 08-0840272

Date: 1/23/2008

Topic: Reckless driving results in permanent physical impairment

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
State: Cannot be determined
Local: Cannot be determined

- **Juvenile Correctional Centers:**
Cannot be determined
- **Juvenile Detention Facilities:**
Cannot be determined

Summary of Proposed Legislation:

The proposal amends § 46.2-868 to increase the penalty for reckless driving in certain circumstances. Under the proposal, the penalty for operating a vehicle in a manner demonstrating a malicious disregard for the likelihood of death or serious bodily harm to another person is increased from a Class 1 misdemeanor to a Class 6 felony if it results in permanent and significant physical impairment to another.

The 2004 General Assembly increased the penalty for reckless driving to a Class 6 felony in cases in which the offender was driving while his license was suspended for a moving violation and his actions caused the death of another. That same year, the General Assembly established, under § 46.2-865.1, a Class 6 felony for vehicle racing that results in injury to another; the penalty for racing is punishable by imprisonment for 1 to 20 years, with a one-year mandatory minimum term, if death results. In 1997, the General Assembly added a Class 6 felony offense for the maiming of another, causing permanent and significant physical impairment, as the result of driving while intoxicated (§ 18.2-51.4).

Analysis:

According to calendar year (CY) 2005 and CY2006 Local Inmate Data System (LIDS) data, a total of 1,611 offenders held pre- or post-trial in jail were convicted of a Class 1 misdemeanor for driving recklessly in a manner that endangered life, limb or property, in violation of § 46.2-852 of the *Code of Virginia*. For 1,460 of the 1,611 offenders, this offense was the most serious charge at conviction. The majority (73%) of offenders held in jail received a local-responsible (jail) term, for which the median sentence was 20 days. The few offenders (4%) who received a state-responsible prison term were convicted of additional offenses. Approximately 13% of these offenders did not receive an active period of incarceration to serve after sentencing. LIDS data are not sufficiently detailed to identify how many of these cases involved permanent and significant physical impairment.

During this two-year period, LIDS data reveal that 21 offenders were convicted under § 18.2-51.4 for the maiming of another as a result of driving while intoxicated. More than half (57%) were given a prison term, for which the median sentence was 3.3 years. All but one of the remaining offenders received a jail term (median sentence was five months).

This data reveal one conviction under § 46.2-865.1 for vehicle racing that resulted in injury; that defendant was sentenced to six months in jail.

Impact of Proposed Legislation:

State adult correctional facilities. Because it increases the penalty for an existing Class 1 misdemeanor to a Class 6 felony under certain circumstances, the proposal is expected to increase the need for state-responsible (prison) beds. The number of additional felony convictions that could result from the proposal cannot be estimated; therefore, the magnitude of the impact 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, the proposal may have an impact on local and state community corrections resources. However, full cost of the impact on adult community corrections cannot be estimated.

Virginia's sentencing guidelines. The guidelines also do not cover felony conviction under § 46.2-868 when this crime is the primary (most serious) offense in the case. A conviction under this provision, however, could augment the guidelines recommendation as an additional offense if the most serious offense at sentencing is covered by the guidelines. No adjustment to the sentencing guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the impact on bed space needs for juvenile correctional centers (JCC) cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the impact on the bed space needs of juvenile detention facilities cannot be determined.

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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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