



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1424

Amendment in the Nature of a Substitute (Patron Prior to Substitute – Martin)

LD#: 09-1554268

Date: 2/9/2009

Topic: Driving while intoxicated

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Programs:**
None (\$0)

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

Summary of Proposed Legislation:

The proposal adds § 18.2-268.13 to clarify the definition of substantially similar laws for determining the number of prior offenses in driving while intoxicated cases. Section 18.2-270 details the penalties for driving while intoxicated in violation of § 18.2-266 and provides for penalty enhancements based upon the offender's prior record. In addition to itemizing specific sections of the *Code of Virginia* that can be used to enhance the punishment, § 18.2-270 also allows the use of prior violations of substantially similar laws of any other state or of the United States. The proposal clarifies that this language includes laws that criminalize driving with a prohibited blood alcohol content of .08 or more. The proposal also states that a conviction for driving under the influence in a state contiguous to the Commonwealth or in the District of Columbia would be considered a prior conviction under a substantially similar law. Statutes relating to driving under the influence in some states contain different provisions relating to whether the defendant may rebut certain evidence in driving under the influence cases. This may be a key distinction in determining whether laws from other jurisdictions can be considered substantially similar to Virginia's statutes, as currently defined.

The General Assembly has modified § 18.2-270 numerous times over the past several years. Most notable include lowering of the blood alcohol content threshold needed to apply certain mandatory minimum incarceration terms, ensuring that mandatory minimum terms of confinement must be served consecutively, and loosening the requirements for what constitutes a prior qualifying offense for any subsequent offense violations.

Analysis:

According to the fiscal year (FY) 2006 and FY2007 Pre/Post-Sentence Investigation (PSI) database, 1,888 offenders were sentenced for a 3rd or 4th conviction of driving under the influence (DUI) of alcohol in violation of § 18.2-266 during this time period. The 3rd or 4th conviction for DUI was the primary, or most serious, offense in 1,691 of these cases. Roughly two-thirds (66.2%) of these offenders received a local-responsible (jail) sentence, with a median sentence of 6 months. For the

30.7% of offenders who were given a state-responsible (prison) term, the median sentence was 1.5 years.

According to the calendar year (CY) 2005 and CY2006 Local Inmate Data System database, there were 8,132 offenders held pre- or post-trial in jail who were sentenced for a 2nd conviction of driving while intoxicated as the primary, or most serious, offense. While 92% of these offenders were sentenced to a jail term, with a median sentence of slightly less than one month, the remaining 8% were not given an active term of incarceration.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal clarifies the definition of substantially similar laws for determining the number of prior offenses in driving while intoxicated cases. Because the proposed language clarifies existing language already in the *Code*, it is not expected to increase the number of persons convicted under § 18.2-266. Therefore, future state-responsible (prison) bed space needs of the Commonwealth are not expected to increase.

Local adult correctional facilities. The proposal is not expected to increase local-responsible (jail) bed space needs of the Commonwealth.

Adult community corrections resources. The proposal is not expected to increase the need for adult community corrections resources.

Virginia's sentencing guidelines. Most 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, the proposal is not expected to increase juvenile correctional center bed space needs.

Juvenile detention facilities. According to the Department of Juvenile Justice, the proposal is not expected to increase bed space needs of juvenile detention facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 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.