



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 770

##### Enrolled

(Patrons Prior to Enrollment – Cleaveland and Iaquinto)

LD #: 10104933

Date: 3/4/2010

Topic: Arrest without a warrant

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$50,000 \*
- **Local Adult Correctional Facilities:**  
Cannot be determined
- **Adult Community Corrections Programs:**  
Cannot be determined

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

\* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 781 of the 2009 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

#### Summary of Proposed Legislation:

The proposed legislation amends §§ 19.2-73, 19.2-74, 19.2-80, 19.2-81, and 19.2-82 relating to arrest without a warrant. Specifically, the proposal would allow an officer to make an arrest without a warrant when the officer has probable cause to suspect a person of driving or operating a motor vehicle, watercraft or motorboat while intoxicated, whether or not the alleged offense was committed in the officer's presence. Under the proposal the arrest must occur within three hours of the alleged offense instead of within three hours of the occurrence of a motor vehicle accident. The proposal also removes the ability to arrest without a warrant when the officer has probable cause that there has been a violation of an order issued pursuant to § 29.1-738.4 (reckless or intoxicated operation of watercraft or motor boat).

Other proposed changes were either technical in nature or will have no substantive impact on the prison or jail bed space needs of the Commonwealth.

#### Analysis:

According to the Virginia State Police, 28,039 adults were arrested in 2008 for driving while intoxicated (*Crime in Virginia 2008*).

Available data do not contain information on the number of additional offenders who, under the proposal, might be arrested within the three hour limit without a warrant based on probable cause for a DWI violation (motor vehicle, watercraft, or boat) that was not committed in the officer's presence.

A first conviction for DWI is a Class 1 misdemeanor punishable by up to 12 months in jail, while a second DWI conviction is punishable by incarceration up to one year. A variety of mandatory minimum penalties apply based on the offender's blood alcohol level, whether or not a child was in the

car, and the period of time since the previous DWI conviction. A third DWI conviction within 10 years is a Class 6 felony carrying a mandatory minimum sentence of 90 days or, if committed within five years of the previous DWI, six months in jail. Finally, a fourth DWI conviction within 10 years is a Class 6 felony requiring a mandatory minimum one-year prison term.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposal is likely to result in additional convictions for DWI, including felony convictions for third and fourth DWI violations. In this way, the proposal is expected to increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal. The magnitude of the impact on prison beds cannot be quantified.

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

**Adult community corrections programs.** Because the proposal could result in convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for local and state community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

**Virginia's sentencing guidelines.** The sentencing guidelines cover felony DWI violations. No adjustment to the guidelines would be necessary under the proposal.

**Juvenile correctional centers.** According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase juvenile correctional center (JCC) bed space needs.

**Juvenile detention facilities.** According to the Department of Juvenile Justice (DJJ), 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; therefore, Chapter 781 of the 2009 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.**

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

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