



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 770

Amendment in the Nature of a Substitute

(Patrons Prior to Substitute – Cleaveland and Iaquinto)

LD #: 10104933 REVISED

Date: 3/1/2010

Topic: Arrest without a warrant

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 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. Currently, an officer may make an arrest without a warrant within three hours of the occurrence of an accident involving a motor vehicle when the officer has probable cause to suspect a person of driving or operating a motor vehicle, watercraft or motorboat while intoxicated. The proposal adds language to clarify that an officer has this authority whether or not the offense was committed in the officer's presence.

The proposal also made several changes to § 19.2-81 that affect arrests without a warrant involving watercraft and motor boats. Language was struck that allows an arrest without a warrant under certain circumstances (violating either subsection B of § 29.1-738 [operating a watercraft or motor boat while intoxicated] or a court order pursuant to § 29.1-738.4 [reckless or intoxicated operation of watercraft or motor boat]). Subsection B of § 29.1-738 was then reinserted into a paragraph dealing with arrests without a warrant within three hours of an accident involving a motor vehicle. The result is that, of the situations involving watercraft or motor boats where an officer can currently make an arrest without a warrant, only those involving a person operating a watercraft or motor boat while intoxicated within three hours of an accident with a motor vehicle would be subject to an arrest without warrant under the proposal. As written, this proposal would apply to circumstances when a watercraft or motor boat has an accident with a motor vehicle; therefore, the proposed language is more restrictive than current law.

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.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal is unlikely to increase the future state-responsible (prison) bed space needs of the Commonwealth.

Local adult correctional facilities. Similarly, the proposal is unlikely to increase local-responsible (jail) bed space needs.

Adult community corrections programs. The proposal is not expected to affect state community corrections resources.

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.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities.

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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