



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 773 (Patron – Cleaveland)

LD #: 10102549

Date: 12/22/2009

Topic: Driving while intoxicated, analogous DUI statutes

Fiscal Impact Summary:

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

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

Summary of Proposed Legislation:

The proposal adds language to § 18.2-270, related to driving while intoxicated (DWI), to clarify what constitutes an analogous law in another state. 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 of DWI offenses. In addition to itemizing specific sections of the *Code of Virginia* that qualify as prior DWI offenses, § 18.2-270 also permits violations of "substantially similar" laws in other states or of the United States to be counted as prior DWIs for the purposes of penalty enhancements. The proposal clarifies the statute by specifying that violations of "*analogous*" provisions elsewhere can be considered prior DWIs. Under the proposal, a law is deemed "*analogous*" if it criminalizes the operation of a motor vehicle while the operator is impaired by or under the influence of intoxicants or the law criminalizes the operation of a motor vehicle while the operator has a blood alcohol concentration (BAC) of .08 percent or more by weight by volume or .08 grams or more per liter of breath as its presumptive or per se level of intoxication.

The General Assembly has modified § 18.2-270 numerous times over the past several years. Most notable include: lowering of the BAC threshold that triggers certain mandatory minimum incarceration terms, ensuring that mandatory minimum terms of confinement are served consecutively, and expanding what constitutes a prior qualifying offense.

Analysis:

According to the fiscal year (FY) 2008 and FY2009 Sentencing Guidelines database, 1,740 offenders were sentenced for a third or subsequent DWI conviction (a felony). The DWI was the primary, or most serious, offense in 1,487 of these cases. The majority (74%) of these offenders were sentenced to a local-responsible (jail) term, with a median sentence of six months. For the 25% who were given a state-responsible (prison) term, the median sentence was 1.3 years.

According to the Local Inmate Data System (LIDS) for calendar years 2007 and 2008, a misdemeanor DWI was the most serious offense for 24,077 offenders held pre- or post-trial in jail during the two-year period. Almost all (89%) were sentenced to a jail term, with a median sentence of 10 days.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal clarifies what is deemed to be an analogous DWI offense for purposes of determining prior DWI offenses in other states, etc. 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, the proposal is not expected to increase the future state-responsible (prison) bed space needs of the Commonwealth.

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. 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, the impact of the proposal on juvenile correctional center bed space needs cannot be determined.

Juvenile detention facilities. According to the Department of Juvenile Justice, the impact of the proposal 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 is \$0 for periods of imprisonment in state adult correctional facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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