



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 300

Amendment in the Nature of a Substitute (Patron Prior to Substitute – Miller, J.C.)

LD #: 10104338

Date: 1/21/2010

Topic: Involuntary manslaughter and driving under the influence relating to minors

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000*
- **Local Adult Correctional Facilities:**
\$16,158 (1 bed)
- **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 proposal amends §§ 16.1-278.9, 18.2-36.1, 18.2-51.4, 18.2-266.1 and 18.2-270, and adds § 18.2-270.02, to impose or increase mandatory minimum sentences and expand the application of statutes when the victim or passenger is 17 years of age or younger (a minor).

Under the proposal, when the victim is a minor and the defendant is age 21 or older, any violation of § 18.2-36.1 would be aggravated involuntary manslaughter. This would increase the penalty from a Class 5 felony to a felony with a 20-year statutory maximum and a one-year mandatory minimum.

The penalty for a defendant age 21 or older convicted of maiming a minor as a result of driving while intoxicated (DWI), in violation of § 18.2-51.4, would increase from a Class 6 to a Class 5 felony under the proposal. Currently, there is no increase in penalty based on the victim's or the defendant's age.

The proposal increases the mandatory minimum sentence for DWI by a defendant age 21 or older while transporting a minor (§ 18.2-270.02) from five to 10 days (in addition to any other mandatory term required). For a second DWI by a defendant age 21 or older while transporting a minor, the penalty increases from a statutory maximum of one year to a Class 6 felony with a minimum fine of \$1000 and a 90-day mandatory period of confinement. The penalties proposed under § 18.2-270.02 would not apply to violations of § 18.2-266.1, driving after illegally consuming alcohol.

Analysis:

The fiscal year (FY) 2007 and FY2008 Pre/Post-Sentence Investigation (PSI) database indicates that 60 offenders were convicted under § 18.2-36.1 as the primary, or most serious offense, during this time period. Although the age of the victim was missing in 15 cases, two cases were identified as having a

victim age 17 and less and a defendant age 21 or more. Both defendants were convicted of aggravated involuntary manslaughter and all received state-responsible (prison) terms. One received a sentence of 3.7 years and the other 7.9 years.

Also based on PSI data for this time period, 22 offenders were convicted under § 18.2-51.4; however, no victim under the age of 18 could be identified.

According to the Local Inmate Data System (LIDS) for calendar years 2007 and 2008, a misdemeanor DWI while transporting a child was the most serious offense for 506 offenders held pre- or post-trial in jail during the two-year period. All but 15 defendants were 21 years of age or older and almost all (92%) of the 330 offenders convicted of a first DWI while transporting a child were given a jail term, with a median sentence of 8 days; however, 54% of the offenders were given less than the proposed 10-day mandatory minimum sentence. Of the 176 defendants convicted of a second DWI while transporting a minor, 146 were given a jail term with a median sentence of 30 days; however, 78% were given less than the proposed 90 days.

Another 50 offenders, none under the age of 21, were convicted of a felony DWI while transporting a child. Half (50%) of the offenders received a state-responsible (prison) term with a median sentence of slightly more than two years. Nearly 42% received a local-responsible (jail) term with a median sentence of six months; the remaining 8% did not receive an active term of incarceration to serve.

Impact of Proposed Legislation:

State adult correctional facilities. Because it increases penalties and adds or increases mandatory minimum sentences for specified crimes under certain circumstances, the proposed legislation may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, the databases available to the Commission do not contain sufficient detail to estimate the number of convictions likely to be affected by the proposal. Therefore, the magnitude of the impact cannot be quantified.

Local adult correctional facilities. The proposed legislation increases the mandatory minimum sentence for DWI while transporting a child from five to 10 days for the first offense and from a minimum of 15 days to 90 days for a second or subsequent offense. Thus, the proposal is expected to increase local-responsible (jail) bed space needs. The impact is estimated to be an average of one bed by FY2016 (state costs: \$16,158; local costs: \$17,847).

Estimated Six-Year Impact in Local-Responsible (Jail) Beds

FY11	FY12	FY13	FY14	FY15	FY16
1	1	1	1	1	1

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 adult 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 violations of §§ 18.2-36.1 and 18.2-51.4 that are processed in Virginia's circuit courts. However, convictions under § 18.2-270 in which the offender transported a child are not covered by guidelines as the primary (or most serious) offense. Such a conviction, however, may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

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

Juvenile detention facilities. According to the Department of Juvenile Justice (DJJ), the proposal will not affect juvenile detention facility bed space needs.

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.

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety's Committee on Inmate Forecasting in 2009.
2. Cost per jail bed was based on The Compensation Board's FY2008 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$29.93 per day or \$10,932 per year. The local cost was calculated by using the daily expenditure cost of \$67.99 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$33.06 per day or \$12,075 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

Assumptions relating to offenders

1. Offenders currently convicted of a DWI while transporting a child and sentenced to 10 days or more were assumed to have no impact under the proposal.
2. Offenders currently convicted of a DWI while transporting a child and sentenced to 5 days to less than 10 days were assumed to have served the appropriate number of days under current law and 10 days under the proposal.
3. Offenders currently convicted of a DWI while transporting a child who had a sentence recorded as less than 5 days were assumed to have served 5 days under current law and 10 days under the proposal.

Assumptions relating to sentencing

1. The impact of the proposed legislation, which would be effective on July 1, 2010, is phased in to account for case processing time.
2. The local-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation.

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