



## Fiscal Impact Statement for Proposed Legislation

### *Virginia Criminal Sentencing Commission*

#### House Bill No. 49

(Patron – Albo)

LD#: 12100688

Date: 12/07/2011

Topic: DUI manslaughter

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$201,394 (7 beds)
- **Local Adult Correctional Facilities:**  
-\$16,960 (-2 beds)
- **Adult Community Corrections Programs:**  
None (\$0)

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

#### Summary of Proposed Legislation:

Currently, under § 18.2-36.1, any person who unintentionally causes the death of another person as the result of driving while intoxicated is guilty of a Class 5 felony (punishable by imprisonment of 1 to 10 years). If the offender was driving in a manner so gross, wanton, and culpable as to show reckless disregard for human life, he or she is guilty of aggravated involuntary manslaughter, a felony punishable by up to 20 years in prison with a mandatory minimum term of one year. The proposal modifies § 18.2-36.1(A), relating to involuntary manslaughter as the result of driving while intoxicated, to create a mandatory minimum term of one year for this offense. In addition, the proposal increases the mandatory minimum specified in § 18.2-36.1(B) for aggravated involuntary manslaughter from one year to five years.

#### Analysis:

According to fiscal year (FY) 2010 and FY2011 Sentencing Guidelines data, 35 offenders were sentenced for a completed act of involuntary manslaughter related to driving while intoxicated under § 18.2-36.1(A). The involuntary manslaughter conviction was the primary, or most serious, offense in all of the cases. The majority (82.9%) received a state-responsible (prison) term, with a median sentence length of 2.8 years. Three offenders were sentenced to local-responsible (jail) terms of one, eight, and eleven months, respectively. The remaining three offenders did not receive an active term of incarceration to serve after sentencing.

Sentencing Guidelines data for FY2010 and FY2011 also indicate that 31 offenders were sentenced for a completed act of aggravated involuntary manslaughter under § 18.2-36.1(B) during this time period. The aggravated involuntary manslaughter conviction was the primary, or most serious, offense in 29 of these cases. All of these offenders received a state-responsible (prison) term, with a median sentence of 7.5 years.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By establishing a mandatory minimum of one year for offenders convicted under § 18.2-36.1(A) and increasing the mandatory minimum for a violation of § 18.2-36.1(B) from one year to five years, the proposal is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. The impact is estimated to be seven beds by FY2018. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$201,394.

**Estimated Six-Year Impact in State-Responsible (Prison) Beds**

FY13	FY14	FY15	FY16	FY17	FY18
2	3	4	4	6	7

**Local adult correctional facilities.** The proposal is expected to decrease the need for local-responsible (jail) beds, as offenders who received a jail term in the past must be given a mandatory prison sentence under the proposal. The impact is estimated to be a decrease of two beds statewide, for a savings to the state of \$16,960 and \$18,153 to the localities.

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

FY13	FY14	FY15	FY16	FY17	FY18
-1	-2	-2	-2	-2	-2

**Adult community corrections resources.** The proposal is not expected to increase the need for community corrections resources and will likely delay the need for services for offenders affected by the proposal, as they will most likely be staying in prison longer prior to being released to the community.

**Virginia's sentencing guidelines.** Felony convictions under § 18.2-36.1 are covered by the sentencing guidelines. No adjustment to the guidelines would be necessary under the proposal.

**Juvenile correctional centers.** Since mandatory minimum terms do not apply to juvenile court adjudications, the Department of Juvenile Justice (DJJ) does not anticipate an impact upon juvenile correctional center (JCC) bed space needs.

**Juvenile detention facilities.** Since mandatory minimum terms do not apply to juvenile court adjudications, the Department of Juvenile Justice does not anticipate an impact on 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 is \$201,394 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.**

**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 2011.

2. Cost per prison bed was assumed to be \$27,688 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.***
3. Cost per jail bed was based on The Compensation Board's FY2010 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.19 per day or \$10,296 per year. The local cost was calculated by using the daily expenditure cost of \$70.01 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 \$30.17 per day or \$11,020 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 sentencing**

1. The impact of the proposed legislation, which would be effective on July 1, 2012, is phased in to account for case processing time.
2. Offenders subject to the proposed mandatory minimum sentence were assumed to serve the mandatory minimum term specified in the proposal. If an offender was convicted of multiple counts, the mandatory minimum terms were assumed to run consecutively.<sup>1</sup>
3. To gauge the impact on sentencing, it was assumed that the distribution of sentences for the affected cases will be similar to the distribution of sentences under the existing provision for involuntary and aggravated involuntary manslaughter under § 18.2-36.1.
4. Release dates were estimated based on the average rates at which inmates in the Department of Corrections' facilities were earning sentence credits as of December 31, 2010. For manslaughter, this rate was 11.3%.

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<sup>1</sup> Recent analysis revealed that, in 96.9% of cases, judges set multiple mandatory minimum sentences to run consecutively (2010 Annual Report of the Virginia Criminal Sentencing Commission).