



## Fiscal Impact Statement for Proposed Legislation

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### Virginia Criminal Sentencing Commission

#### House Bill No. 957 Amendment in the Nature of a Substitute (Patron Prior to Substitute – Bell)

LD#: 12105101

Date: 2/6/2012

Topic: Driving while under the influence of alcohol

#### 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 890 of the 2011 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

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#### Summary of Proposed Legislation:

The proposed legislation amends §§ 18.2-272 and 46.2-391 of the *Code of Virginia*, relating to driving on a restricted license while under the influence of alcohol. Section 46.2-389 outlines certain circumstances under which the Commissioner of the Department of Motor Vehicles must revoke a driver's license. Specifically, if an individual is found guilty of certain fraud offenses relating to the Department of Motor Vehicles, a felony involving a motor vehicle, failure to stop at the scene of an accident involving physical injury, driving while intoxicated (DWI), driving after the driver's license was forfeited for driving while intoxicated, or driving a commercial vehicle while intoxicated, the Commissioner must revoke the offender's driver's license for one year.

Pursuant to § 46.2-391, an individual's driver's license must be revoked for three years if he or she is found guilty of a second offense for driving while intoxicated or driving after his or her driver's license has been forfeited for DWI within 10 years. If an individual is found guilty of manslaughter resulting from driving a motor vehicle or driving while intoxicated resulting in the serious physical impairment of another, the offender's driver's license must be revoked for at least five years. If an individual is convicted of three offenses arising out of separate incidents or occurrences within 10 years for DWI, his or her license is revoked for at least five years. A judge may issue a restricted driver's license if certain criteria are met. Under § 46.2-391, an individual who violates the driving prohibition or license restrictions required by this section is guilty of a Class 1 misdemeanor if the driving does not endanger others. If the driving endangers others, occurs in conjunction with certain DWI offenses, or is the second or subsequent violation, the offender is guilty of a felony punishable by up to five years imprisonment and a mandatory minimum term of one year.

Section 18.2-272 of the *Code* establishes penalties for operating a motor vehicle while a driver's license is revoked or restricted after a DWI conviction. It is a Class 1 misdemeanor to drive or operate a motor vehicle, engine, or train in violation of a revoked or restricted license under § 18.2-272(A). If an

individual whose driver's license was revoked or restricted as the result of a DWI conviction operates a motor vehicle with a blood alcohol content of .02 percent or more or drives without the required ignition interlock system, he or she is guilty of a Class 1 misdemeanor. A third or subsequent violation of § 18.2-272 is a Class 6 felony. As described above, § 46.2-391 provides penalties for individuals who violate the conditions of a revoked or restricted license issued under that section.

The proposed modifications to § 18.2-272(B) require that the restriction concerning blood alcohol content continue for three years after an offender's license is suspended or revoked following a conviction for driving while intoxicated or refusal to submit to a blood or breath test. The period is extended to five years after an offender's license is suspended or revoked for a second conviction for DWI or refusal. Under the proposal, the restriction of blood alcohol content would be in effect for two years following the restoration of driving privileges after an indefinite revocation was imposed pursuant to § 46.2-391(B), relating to DWI manslaughter, DWI maiming, and third offense DWI. Under the proposed § 46.2-391(I), the restrictions in § 18.2-272(B) would apply in instances where a driver's license is revoked pursuant to § 46.2-391.

The General Assembly has revised § 18.2-272 several times in recent years. In 2004 and 2005, the General Assembly added and modified the restriction relating to driving with a blood alcohol content of .02 percent or more. The 2006 General Assembly increased a third violation of § 18.2-272 within 10 years from a Class 1 misdemeanor to a Class 6 felony and the 2007 General Assembly altered the language relating to this felony. In 2009, the General Assembly added subsection C to § 18.2-272, which makes it a Class 1 misdemeanor to drive or operate a motor vehicle without a certified ignition interlock system if one is required.

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#### **Analysis:**

According to fiscal year (FY) 2010 and FY2011 General District Court Automated Information System (CAIS) data, 4,168 offenders were convicted of a Class 1 misdemeanor under § 18.2-272(A) for driving on a revoked or restricted license after a DWI conviction. While 39.3% of these offenders did not receive an active term of incarceration, the majority (60.7%) were sentenced to a local-responsible (jail) term, for which the median sentence was approximately one month. Three of these offenders were also convicted of driving on a restricted license with a blood alcohol content greater than .02 percent on the same date and eight offenders were also convicted of an ignition interlock violation. An additional 292 offenders were convicted under § 18.2-272(B) for driving on a revoked or restricted license with a blood alcohol content greater than .02 percent. Of these, 25.7% did not receive an active term of incarceration and the remaining 74.3% received a jail term, with a median sentence of one month. Of the 32 offenders who were convicted of an interlock violation under § 18.2-272(C), 65.6% did not receive an active term of incarceration to serve after sentencing. The remaining eleven offenders were sentenced to a jail term, with a median sentence length of one month.

According to FY2010 and FY2011 Circuit Court CAIS data, 47 offenders were convicted of a felony for a third or subsequent violation of § 18.2-272. This offense was the primary, or most serious, offense in 33 of the cases. Of these, eight offenders (24.2%) did not receive an active term of incarceration to serve after sentencing. More than half (51.5%) were sentenced to a local-responsible (jail) term, with a median sentence length of six months. The remaining eight offenders were sentenced to state-responsible (prison) terms, for which the median sentence was 1.3 years.

The Department of Juvenile Justice (DJJ) Court Service Units serve as the point of entry into the juvenile justice system. An "intake" occurs when a juvenile is brought before a court service unit officer for one or more alleged law violations. DJJ reports averaging approximately one intake petition per year for the three most recent fiscal years (FY2009 to FY2011) for a violation of § 18.2-272 involving a person under the age of 18. No juveniles were committed to DJJ under § 18.2-272 during the three-year period.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposal would extend the period of time during which certain individuals would be prohibited from driving with a blood alcohol content lower than .08 percent. By expanding the misdemeanor provisions of § 18.2-272, the proposal increases the number of individuals who may be convicted of three violations of the section within 10 years and therefore become subject to the felony provisions. In this way, the proposal could increase the future state-responsible (prison) bed space needs of the Commonwealth. However, the number of additional felony convictions that may result from the proposal cannot be estimated; therefore, the impact of the proposal on prison bed space cannot be determined.

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

**Adult community corrections programs.** Because the proposal could result in additional felony convictions and subsequent supervision requirements for some offenders, the proposal may increase the need for adult community corrections resources. The potential impact on community corrections programs, however, cannot be determined.

**Virginia's sentencing guidelines.** The sentencing guidelines cover three specific felony DWI offenses under § 18.2-266. Felony convictions under § 18.2-272 are not covered by the guidelines as the primary (or most serious) offense; however, such convictions could augment the 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, the proposal is not expected to increase juvenile correctional center bed space needs.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that 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 890 of the 2011 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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