



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 962

#### *Amendment in the Nature of a Substitute*

*(Patron Prior to Substitute – Bell, R.B. and Albo)*

**LD#:** 12104941

**Date:** 01/31/2012

**Topic:** Driving while intoxicated resulting in serious bodily injury

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$529,049 (19 beds)
- **Local Adult Correctional Facilities:**  
-\$19,631 (-2 beds)
- **Adult Community Corrections Programs:**  
None (\$0)

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

#### Summary of Proposed Legislation:

Currently, under § 18.2-51.4, any person who, as the result of driving while intoxicated in a manner so gross, wanton, and culpable as to show reckless disregard for human life, unintentionally causes the serious bodily injury of another person resulting in permanent and significant physical impairment is guilty of a Class 6 felony (punishable by imprisonment of 1 to 5 years). The proposal modifies § 18.2-51.4 to create a mandatory minimum term of three years for this offense.

#### Analysis:

According to fiscal year (FY) 2010 and FY2011 Circuit Court Automated Information System (CAIS) data, 32 offenders were sentenced for a completed act of driving while intoxicated resulting in serious bodily injury in violation of § 18.2-51.4 during this time period. The DUI maiming conviction was the primary, or most serious, offense in 15 of the cases. Of these, more than half (60%) received a state-responsible (prison) term, for which the median sentence was 1.7 years. One-third of the offenders (33%) were sentenced to a local-responsible (jail) term with a median sentence of six months. The remaining offender did not receive an active term of incarceration to serve after sentencing.

#### Impact of Proposed Legislation:

**State adult correctional facilities.** By establishing a mandatory minimum of three years for offenders convicted under § 18.2-51.4, the proposal is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. The impact is estimated to be 19 beds by FY2018. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$529,049.

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

FY13	FY14	FY15	FY16	FY17	FY18
2	7	15	19	19	19

**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 \$19,631 and \$21,011 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 some offenders affected by the proposal, as they would be serving the mandatory minimum sentence prior to being released to the community.

**Virginia's sentencing guidelines.** Felony convictions under § 18.2-51.4 are not currently covered by the sentencing guidelines as the primary (most serious) offense in a case. 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 \$529,049 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 convicted of a completed violation of § 18.2-51.4 (as the primary or an additional offense) who were sentenced to less than the proposed mandatory minimum of three years 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 driving while intoxicated resulting in serious bodily injury under § 18.2-51.4.
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 assault, this rate was 10.9%.

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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).