



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 945 (Patron – Surovell)

LD#: 14100326

Date: 12/27/2013

Topic: Driving under the influence

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 806 of the 2013 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposed legislation amends several sections of the *Code of Virginia* relating to driving under the influence.

Section 18.2-272 of the *Code* establishes base penalties for operating a motor vehicle while a driver's license is revoked or restricted following a conviction for driving while intoxicated. 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). Under subsection B, it is a Class 1 misdemeanor for an individual whose driver's license was revoked or restricted as the result of a DWI conviction to operate a motor vehicle with a blood alcohol content of .02 percent or more. Driving without an ignition interlock system that is administratively required (by § 46.2-391.01) because a court failed to impose the prohibition is also punishable a Class 1 misdemeanor under § 18.2-272(C). A third or subsequent violation of § 18.2-272 within 10 years is a Class 6 felony. The proposal modifies § 18.2-272 to include violations of a court ordered ignition interlock requirement that are not associated with a restricted license.

Under the proposed modifications to § 18.2-270.1(B), adults convicted for a first offense driving while intoxicated whose blood alcohol content was less than .15 would be prohibited from operating a motor vehicle that is not equipped with an ignition interlock system for twelve consecutive months. Currently, the court must, as a condition of a restricted license, prohibit all individuals convicted of driving while intoxicated from operating a vehicle that is not equipped with an ignition interlock system for at least six consecutive months but not to exceed the period of license suspension or restriction. Section 18.2-271 provides that the driver's license of an individual convicted of a first offense for driving while intoxicated must be suspended or restricted for one year from the date of conviction. The proposal narrows the applicability of this requirement to individuals convicted of a first offense whose blood alcohol level was at least .15.

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 by § 46.2-391.01 (administrative enforcement of ignition interlock requirements).

Analysis:

Existing data do not contain sufficient detail to determine the number of cases that would be affected by the proposed amendments. However, affected offenders may be sentenced similarly to those who are currently convicted under § 18.2-272.

According to fiscal year (FY) 2012 and FY2013 General District (Traffic) Court Case Management System (CMS) data, 54% of offenders convicted of a Class 1 misdemeanor under § 18.2-272(A) for driving on a revoked or restricted license after a DWI conviction (as the primary, or most serious, offense) were given a local-responsible (jail) term. The median sentence in these cases was approximately one month. The remaining offenders did not receive an active term of incarceration to serve after sentencing. For offenders whose primary offense was a misdemeanor violation of § 18.2-272(B) for driving on a revoked or restricted license with a blood alcohol content greater than .02 percent, most (77%) were sentenced to a jail term with a median sentence of one month. Of the 23 offenders who were convicted of an interlock violation under § 18.2-272(C), 65.2% were sentenced to a jail term. The median sentence length for these offenders was one month.

Circuit Court CMS data for FY2012 and FY2013 indicate that 95 offenders were convicted of a felony for a third or subsequent violation of § 18.2-272. This was the primary, or most serious, offense in 77 of the cases. Most (63.6%) of these offenders were sentenced to a local-responsible (jail) term, with a median sentence length of six months. While six offenders did not receive an active term of incarceration to serve after sentencing, the remaining 28.6% were sentenced to state-responsible (prison) terms, for which the median sentence was 1.1 years.

Impact of Proposed Legislation:

State adult correctional facilities. The proposal contains two aspects that may affect the state-responsible (prison) bed space needs of the Commonwealth. First, the proposal may decrease the number of individuals subject to a suspended or restricted license and, therefore, may reduce the number of individuals who would be subject to the provisions of § 18.2-272. Second, by increasing the mandatory length of time that certain individuals would be subject to ignition interlock requirements, the proposal may increase the period of time that some individuals could be found in violation of § 18.2-272 for failing to comply with ignition interlock requirements. In this way, the proposal is expected to impact the future state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not contain sufficient detail to identify cases that would be affected by the proposal or estimate the net impact of the proposed legislation; therefore, the impact of the proposal on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the impact of the proposal on local-responsible (jail) bed space needs cannot be determined.

Adult community corrections resources. The net impact on state community corrections resources and local community-based probation services cannot be estimated.

Virginia’s sentencing guidelines. Felony convictions under § 18.2-272 are covered by the current sentencing guidelines when this crime is the primary, or most serious, offense in a case. 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. The Department of Juvenile Justice (DJJ) reports that the proposal will not increase the bed space needs of juvenile detention facilities.

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 806 of the 2013 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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