



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 96
Amendment in the Nature of a Substitute
(Patron Prior to Substitute – Head)

LD#: 14104737

Date: 2/3/2014

Topic: Driving recklessly with a suspended license; causing death

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:**
Cannot be determined
- **Juvenile Detention Facilities:**
Cannot be determined

* 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 proposal would amend § 46.2-868, *Code of Virginia*, relating to driving recklessly with a suspended license and causing the death of another.

Currently, § 46.2-868(B) increases the penalty for reckless driving to a Class 6 felony in cases in which the offender was driving while his license was suspended for a moving violation and his actions were the sole and proximate cause of the death of another. This proposal would expand the applicability of this offense to include cases where the offender's license was suspended for any reason, not just due to a moving violation. In addition, the act of reckless driving would only need to be the proximate cause, not the sole and proximate cause, of the death of another.

Violations regarding driving with a suspended license are currently covered under several sections of the *Code*. Per § 46.2-391, felony violations for driving on a suspended license (1) with endangerment, (2) in conjunction with a DWI violation, or (3) as a second or subsequent offense are covered under § 46.2-391(D). These offenses are punishable by imprisonment from one to five years, and each carries a mandatory minimum penalty of 12 months incarceration. In addition, the 2004 General Assembly increased the penalty for reckless driving under § 46.2-868(B) to a Class 6 felony when the offender is driving while his license is suspended for a moving violation and his actions cause the death of another. Misdemeanor violations related to driving on a suspended license are covered by multiple provisions, including §§ 46.2-301, 46.2-302, 46.2-346(A,5), 46.2-370, and 46.2-391(D,1).

Analysis:

According to the Virginia Highway Safety Office, there were 1,539 traffic fatalities in the Commonwealth during 2011 and 2012.¹ It is not known how many of these fatalities were caused by a driver whose license was suspended at the time of the accident.

According to the Circuit Court Case Management System (CMS)² for fiscal year (FY) 2012 and FY2013, there were no felony convictions for reckless driving with a suspended license resulting in the death of another under § 46.2-868(B).

Based on Sentencing Guidelines data for FY2012 and FY2013, 167 offenders were convicted of a felony under § 46.2-391(D) for driving on a suspended license as their primary (most serious) offense at sentencing. Of these, 154 (92.2%) were sentenced to state-responsible (prison) terms, with a median sentence of just over 1.5 years. Nine offenders (5.4%) were sentenced to local-responsible (jail) terms, with a median sentence of 12 months. Four offenders (2.4%) did not receive an active term of incarceration to serve after sentencing; most likely, these individuals were sentenced to the time served in jail while awaiting trial and sentencing.

According to General District Court (Traffic) CMS data for FY2012 and FY2013, 33,079 offenders were convicted of misdemeanor violations for driving on a suspended license. Of these, 12,922 (39%) were sentenced to local-responsible (jail) terms with a median sentence of approximately 15.4 days. The remaining 61% were not given an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of an existing felony offense, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The number of additional felony convictions that could result from the proposal cannot be estimated; therefore, the magnitude of the impact cannot be determined.

Local adult correctional facilities. The proposal may also 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 additional offenders, the proposal may increase the need for adult community corrections resources. However, the potential impact on state and local community corrections programs cannot be determined.

Virginia's sentencing guidelines. Convictions under § 46.2-868(B) are not covered by the sentencing guidelines as the primary (most serious) offense in a case; however, convictions for this crime may augment the guidelines recommendation if a covered offense is the most serious at sentencing. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. The Department of Juvenile Justice reports that, while this proposal may cause an increase in commitments, the exact impact of this proposal on bed space needs for juvenile correctional centers cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that this proposal's impact on detention center bed space cannot be determined.

¹ *Virginia Traffic Crash Facts (2011 and 2012)*, Virginia Highway Safety Office

² Formerly referred to as the Court Automated Information System (CAIS).

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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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