



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 1406

(Patron – Head)

LD#: 15100540

Date: 11/7/2014

Topic: Driving recklessly with a suspended license

#### 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 2 of the 2014 Acts of Assembly, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

#### Summary of Proposed Legislation:

The proposal adds § 18.2-36.3, relating to driving with a suspended license and causing the death of another, to the *Code of Virginia*. Under the proposal, any person who, with knowledge that his license is suspended or revoked, drives recklessly and causes an accident resulting in the death of another person is guilty of a Class 6 felony.

The proposal appears to have several elements in common with § 46.2-868(B), which 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. The proposal, however, would include cases where the license was suspended for any reason, not just due to a moving violation, and the act of reckless driving would not need to be the “sole and proximate” cause of the death of another. Under § 46.2-868(B), conversely, the offender does not need to know that his privilege to drive has been suspended or revoked in order for the felony to apply. The proposal also states that the provisions of § 18.2-36.3 will not preclude the applicability of any other provision of criminal law that may apply.

Violations regarding driving with a suspended license are currently covered under several sections of the *Code*. 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).

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**Analysis:**

According to the Virginia Highway Safety Office, there were 1,516 traffic fatalities in the Commonwealth during 2012 and 2013.<sup>1</sup> 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)<sup>2</sup> for fiscal year (FY) 2013 and FY2014, four offenders were convicted of felony reckless driving with a suspended license resulting in the death of another under § 46.2-868(B). This offense was the primary, or most serious, offense in two of the cases. Both offenders were sentenced to a state-responsible (prison) term of approximately 2.5 years.

Sentencing Guidelines data for FY2013 and FY2014 indicate that 171 offenders were convicted of a felony under § 46.2-391(D) for driving on a suspended license as their primary offense at sentencing. The majority of these offenders (92.4%) were sentenced to a state-responsible (prison) term, with a median sentence of roughly 1.5 years. Ten offenders (5.8%) were sentenced to local-responsible (jail) terms, with a median sentence of 12 months. The remaining three offenders (1.8%) did not receive an active term of incarceration to serve after sentencing; these individuals were most likely sentenced to the time served in jail while awaiting trial and sentencing.

According to the General District Court (Traffic) Case Management System (CMS) for FY2013 and FY2014, 87,452 offenders were convicted of a misdemeanor for driving on a suspended license in violation of §§ 46.2-301, 46.2-302, 46.2-346(A,5), 46.2-370, or 46.2-391(D,1). Of these, nearly one-third (29%) were sentenced to a local-responsible (jail) term, with a median sentence of approximately ten days. The remaining 71% did not receive an active term of incarceration to serve after sentencing.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Because it creates a new Class 6 felony offense, which is punishable by one to five years imprisonment in a state correctional facility, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing data do not provide sufficient detail to estimate the number of new felony convictions, or potentially longer sentences, that could result from enactment of the proposal. Therefore, the impact on prison bed space needs 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 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 the proposed § 18.2-36.3 would not be 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.

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<sup>1</sup> *Virginia Traffic Crash Facts (2012 and 2013)*, Virginia Highway Safety Office

<sup>2</sup> Formerly referred to as the Court Automated Information System (CAIS).

**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.

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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 2 of the 2014 Acts of Assembly, Special Session I, 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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