



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 1639

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

#### *(Patrons Prior to Substitute – Miller and Lindsey)*

**LD#:** 15104840

**Date:** 2/11/2015

**Topic:** Driving under the influence

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
None (\$0)
- **Local Adult Correctional Facilities:**  
Cannot be determined, likely to be small
- **Adult Community Corrections Programs:**  
Cannot be determined

- **Juvenile Correctional Centers:**  
Cannot be determined\*\*
- **Juvenile Detention Facilities:**  
Cannot be determined\*\*

\*\* Provided by the Department of Juvenile Justice

#### Summary of Proposed Legislation:

The proposal amends §§ 18.2-271.1 and 46.2-391.01, relating to offenders who have been convicted of driving while intoxicated (DWI).

Currently, § 18.2-271.1 permits the court to issue a restricted license following a conviction for driving while intoxicated if certain conditions are met. The provisions of § 18.2-271.1(D) apply to offenders whose licenses are subject to revocation under §§ 46.2-389 and 46.2-391(A) due to a conviction for driving while intoxicated under the laws of another state. The proposal would expand the instances in which a court may issue a restricted license to include cases where the offender was convicted of driving while intoxicated in violation of the laws of the United States. This modification would affect offenders who were convicted of driving while intoxicated on federal property, such as national parks and military bases. Sections 46.2-389 and 46.2-391(A) require that the licenses of offenders who have been convicted of certain DWI offenses be revoked for one year or three years, depending on the circumstances of the offense and the offender's prior record.

The proposed modifications to § 18.2-271.1(D) would also require the court to, as a condition of the restricted license, prohibit the offender from operating a motor vehicle that is not equipped with an ignition interlock system for a specified period of time. Currently, under § 18.2-270.1, only offenders convicted of driving while intoxicated under a Virginia law or ordinance are required to install an ignition interlock system as a condition of a restricted license. The proposal also amends § 46.2-391.01 to reflect the new requirement.

Section 18.2-272 of the *Code* establishes base penalties for operating a motor vehicle while a driver's license is revoked or restricted after a conviction for driving while intoxicated. Under § 18.2-272(A)(iii), it is a Class 1 misdemeanor to drive or operate a motor vehicle, engine, or train in violation of a restricted

license issued pursuant to § 18.2-271.1. Per § 18.2-272(A)(iv), any individual who drives after his or her license has been revoked under §§ 46.2-389 or 46.2-391 is also guilty of a Class 1 misdemeanor. 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.

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**Analysis:**

According to the Virginia Department of Motor Vehicles, in FY2014, 218 individuals' licenses were revoked pursuant to §§ 46.2-389 or 46.2-391(A) due to a federal DWI conviction. Existing data sources do not contain sufficient detail to estimate the number of offenders who would be issued a restricted license under the proposal. In addition, the Virginia Department of Motor Vehicles reports that 48 individuals were granted a restricted license under § 18.2-271.1(D) in FY2014 for a DWI conviction from another state. Thus, in FY2014, the maximum number of offenders who would have been subject to the proposed provisions was 266 (218 + 48).

According to fiscal year (FY) 2013 and FY2014 General District (Traffic) Court Case Management System (CMS) data, 46 offenders were convicted of a Class 1 misdemeanor under § 18.2-272(C) for an ignition interlock violation. This is an average of 23 offenders convicted of this offense per year. The Commission on Virginia Alcohol Safety Action Program (VASAP) reports that there were 24,333 DWI convictions in FY2013 for which ignition interlock orders were issued; these offenders were required to have an ignition interlock installed if they wished to receive a restricted license to drive. VASAP also reports that 8,746 offenders had ignition interlock units installed in vehicles as of January 1, 2014. Thus, it is estimated that at least 15,500 offenders convicted of DWI in FY2013 elected not to install an ignition interlock system. Using these data, the rate of conviction for driving without a required ignition interlock system is 0.15% (23 / 15,500).

If the 266 offenders identified above violate ignition interlock requirements at the same rate as offenders currently subject to these provisions, the proposal would likely result in less than one additional misdemeanor conviction per year on average ( $266 \times 0.15\% = .399$ ). However, additional misdemeanor convictions under § 18.2-272(C) could be partially offset by fewer convictions under § 18.2-272(A). Offenders with federal DWI convictions who have a revoked license pursuant to §§ 46.2-389 or 46.2-391(A) currently are not eligible for a restricted Virginia driver's license; federal DWI offenders who drive while their license is revoked can be convicted under § 18.2-272(A) for that violation. The proposal provides a mechanism for federal DWI offenders to receive a restricted license so that they may legally drive to places/activities authorized by the court (e.g., work or school), which could potentially reduce the number of convictions for driving on a revoked license under § 18.2-272(A).

The Sentencing Guidelines Database for FY2013 and FY2014 indicates that 75 offenders were convicted of a felony for a third or subsequent violation of § 18.2-272 during the two-year period.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposal is likely to result in less than one additional misdemeanor conviction under § 18.2-272(C) each year, which may be partially offset by fewer convictions under § 18.2-272(A). Therefore, the proposal is not expected to increase the state-responsible (prison) bed space needs of the Commonwealth during the six-year window specified by § 30-19.1:4 for legislative impact statements.

**Local adult correctional facilities.** Because it could result in additional misdemeanor convictions, the proposal may increase local-responsible (jail) bed space needs. While the magnitude of the impact cannot be determined, the impact is likely to be small.

**Adult community corrections resources.** The impact on community corrections resources cannot be determined.

**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 impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

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