



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 1279

(Patron – Wexton)

LD#: 15102249

Date: 12/28/2014

Topic: Use of handheld personal communications devices while driving

#### 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\*\*

\*\* Provided by the Department of Juvenile Justice

\* 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 modifies § 46.2-1078.1 relating to the use of handheld personal communications devices while driving. The proposal removes language specifically prohibiting a driver from manually entering letters or text into a device or reading an e-mail or text message transmitted to, or stored in, the device. Under the proposal, using a handheld device while driving is prohibited unless the device is configured to allow voice-operated or hands-free operation and it is used in that manner while the vehicle is in motion. The proposal also expands current exceptions (for example, to report an emergency) to include the use of the handheld device for navigation or playing audio, as long as the device is physically mounted in the vehicle while being used. The proposal adds language specifically to permit the use of two-way CB radios in vehicles. A violation of § 46.2-1078.1 is a traffic infraction.

The proposal also creates a new reckless driving offense. Under the proposal, a person who uses a handheld device while committing any traffic offense punishable as a misdemeanor or felony, and the use of the device is the proximate cause of an accident, would be guilty of reckless driving. In addition, the proposal removes the mandatory fine currently required by § 46.2-868 for reckless driving violations committed while using a handheld device.

Under § 46.2-868, reckless driving is punishable as a Class 1 misdemeanor or, if the person's license had been suspended or revoked due a moving violation and the reckless driving was the sole and proximate cause of death of another, a Class 6 felony.

#### Analysis:

According to the General District Court Traffic Case Management System (CMS) for fiscal year (FY) 2014, 1,687 offenders were convicted of using a handheld device while driving in violation of

§ 46.2-1078.1. Fiscal year 2014 was the first year in which this offense could be the primary reason for a motor vehicle stop by law enforcement without any other violation having been committed by the driver. Existing data sources do not contain sufficient information to determine how many of these offenders met the criteria for the proposed reckless driving offense.

According to the same data, two offenders convicted in FY2014 of misdemeanor reckless driving under § 46.2-868 had been using a handheld device when the reckless driving offense was committed. Neither of these offenders received an active term of incarceration to serve after sentencing.

The Circuit Court Case Management System (CMS) for FY2013 and FY2014 indicates that 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.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Because it defines a new reckless driving offense, which under certain circumstances is punishable as a Class 6 felony, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The number of additional felony convictions that may result from the proposal cannot be estimated; however, the impact, if any, is likely to be small.

**Local adult correctional facilities.** By defining a new version of reckless driving, the proposal may increase local-responsible (jail) bed space needs. The magnitude of the impact cannot be determined.

**Adult community corrections programs.** Because the proposal could result in additional felony and misdemeanor convictions with subsequent supervision requirements for 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 for reckless driving under § 46.2-868 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 the 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 the proposal's impact on detention center bed space needs 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.**