



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 1644 (Patron – Loupassi)

LD#: 17100998

Date: 1/9/2017

Topic: Driving under the influence

#### Fiscal Impact Summary:

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

- **Juvenile Direct Care:**  
None (\$0)\*
- **Juvenile Detention Facilities:**  
None (\$0)\*

\* Provided by the Department of Juvenile Justice

#### Summary of Proposed Legislation:

The proposal amends §§ 18.2-270.1, 18.2-270.2, and 18.2-271.1, relating to convictions for driving under the influence.

Under the proposed modifications to § 18.2-270.1(B), for adults convicted for a first offense driving while intoxicated whose blood alcohol content was less than .15, the court would be allowed to order the offender to wear a secure transdermal alcohol monitoring device in lieu of the ignition interlock requirement as a condition of a restricted license. Using the monitoring device and refraining from alcohol consumption during the period of license suspension would be the only conditions of the restricted license for these offenders. The proposal also creates a Class 1 misdemeanor for tampering with or attempting to circumvent the operation of a secure transdermal monitoring device. Currently, the court must 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.

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 Under subsection B, it is a Class 1 misdemeanor for an individual whose driver's license was revoked or restricted as the result of a DWI conviction to operate a motor vehicle with a blood alcohol content of .02 percent or more.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.

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**Analysis:**

According to fiscal year (FY) 2015 and FY2016 General District (Traffic) Court Case Management System (CMS) data, 56% 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 20 days. 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 (80%) were given a jail term with a median sentence of approximately one month. Of the 55 offenders who were convicted of an interlock violation under § 18.2-272(C), 56.4% were sentenced to a jail term. The median sentence length for these offenders was approximately 20 days.

Sentencing Guidelines data for FY2015 and FY2016 indicate that 102 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 71 of the cases. Of these, 33 (46.5%) were sentenced to a local-responsible (jail) term with a median sentence length of three months. While 11 offenders (15.5%) did not receive an active term of incarceration to serve after sentencing, the remaining 38.0% were sentenced to state-responsible (prison) terms, for which the median sentence was one year.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposal would limit the number of restrictions placed upon a subset of individuals subject to a restricted license and, at least as it relates to § 18.2-272, essentially exchanges one mechanism for detecting alcohol consumption prior to driving with another. As a result, the proposal is not expected to increase the number of felony convictions under § 18.2-272. Therefore, the proposal is unlikely to increase the future state-responsible (prison) bed space needs of the Commonwealth.

**Local adult correctional facilities.** By establishing a Class 1 misdemeanor, the proposal may impact local-responsible (jail) bed space needs. However, the magnitude of the impact cannot be quantified.

**Adult community corrections resources.** The 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. No adjustment to the guidelines would be necessary under the proposal.

**Juvenile direct care.** According to the Department of Juvenile Justice (DJJ), the proposal will not increase direct care (juvenile correctional center or alternative commitment placement) 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.

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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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**