

## Department of Planning and Budget 2017 Fiscal Impact Statement

**1. Bill Number: HB 2327**

House of Origin	<input checked="" type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Enrolled

**2. Patron: Collins**

**3. Committee: House of Justice**

**4. Title: Driving under the influence**

**5. Summary:**

The proposed legislation makes extensive changes in the current statutes dealing with driving under the influence. Under current law, a person who operates a motor vehicle upon a highway in the Commonwealth or a watercraft on the waters of the Commonwealth is deemed to have consented to having samples of his blood or breath taken to determine the alcohol or drug content of his blood upon arrest for a DUI-related offense. The unreasonable refusal of a person to submit to blood or breath tests is punished (i) for a first offense, as a civil offense with a one-year driver's license suspension; (ii) for an offense committed within 10 years of a prior offense of refusal or of other DUI-related offenses, as a Class 2 misdemeanor with a three-year driver's license suspension; and (iii) for an offense committed within 10 years of two prior offenses of refusal or of other DUI-related offenses, as a Class 1 misdemeanor with a three-year driver's license suspension.

The proposed bill removes breath tests from the implied consent law and provides that such tests constitute a search incident to arrest; blood tests remain subject to the implied consent law.

The proposed bill also eliminates the criminal penalties for refusing to submit to a blood test, making any refusal of a blood test a civil offense. The bill increases the period of license suspension for refusing to submit to a blood test within 10 years of two prior offenses to an indefinite suspension.

For breath tests, the legislation increases the criminal penalties for refusing to submit to a breath test to a Class 1 misdemeanor for refusing to submit to a blood test within 10 years of a prior offense and increases the period of license suspension for refusing to submit to a blood test within 10 years of two prior offenses to an indefinite suspension. The bill also removes the current requirement that the person's refusal to submit to testing be unreasonable before it is subject to any penalty.

The bill also extends to blood tests performed by the Department of Forensic Science pursuant to a search warrant the rebuttable presumption that a person is intoxicated based on the person's blood alcohol level demonstrated by such tests.

Further, the bill allows the failure of a person to submit to a blood or breath test to be commented on by the prosecution in any trial of the person for a DUI-related offense. Currently, such failure could only be introduced as rebuttal evidence for the purpose of explaining at trial the absence of any test results.

The bill also provides that an application for a search warrant to perform a blood test on a person suspected of committing a DUI-related offense shall be given priority over any other matters pending before the judge or magistrate. Finally, the bill authorizes the Attorney General to participate in appeals of civil offenses for unreasonably refusing to submit to testing under the implied consent law.

**6. Budget Amendment Necessary:** Yes. Item 394.

**7. Fiscal Impact Estimates:** Preliminary. See Item 8 below.

**Expenditure Impact:**

<i><b>Fiscal Year</b></i>	<i><b>Dollars</b></i>	<i><b>Fund</b></i>
2018	\$50,000	General
2019	\$0	
2020	\$0	
2021	\$0	
2022	\$0	
2023	\$0	

**8. Fiscal Implications:**

By increasing the length of time that certain individuals' licenses would be revoked, the proposal would also increase the period of time that these individuals could be convicted of a felony for driving while their driver's license is revoked. In this way, the proposal may increase the future state -responsible (prison) bed space needs of the Commonwealth. The proposed legislation also increases a Class 2 misdemeanor offense to a Class 1 misdemeanor. Therefore, this proposal could result in an increase in the number of persons sentenced to jail or prison.

There is not enough information available to reliably estimate how many additional inmates in jail could result from this proposal. Ultimately, the presiding judge will decide if there is to be any time served in jail; however, any increase in jail population will increase costs to the state. The Commonwealth presently pays the localities \$4.00 a day for each misdemeanor or otherwise local responsible prisoner held in a jail and \$12.00 a day for each state responsible inmate. It also funds a considerable portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most

recent Jail Cost Report (November 2016), the estimated total state support for local jails averaged \$32.82 per inmate, per day in FY 2015.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 780 of the 2016 Acts of Assembly requires that a minimum impact of \$50,000 be assigned to the bill.

**9. Specific Agency or Political Subdivisions Affected:**

Department of Corrections  
Local and regional jails  
Department of Forensic Science  
Department of Motor Vehicles  
Department of State Police

**10. Technical Amendment Necessary:** None.

**11. Other Comments:** None.

**Date:** 1/30/2017