Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 402
(Patron – McDougle)

LD#: 18100330 **Date:** 11/13/2017

Topic: Driving under the influence

Fiscal Impact Summary:

- **State Adult Correctional Facilities:** $50,000 *
- **Local Adult Correctional Facilities:** Cannot be determined
- **Adult Community Corrections Programs:** Cannot be determined

- **Juvenile Direct Care:** 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 836 of the 2017 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of $50,000.

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, upon request of a person convicted of driving while intoxicated who is prohibited from operating a motor vehicle that is not equipped with an ignition interlock device, the court may order that the offender wear a secure transdermal alcohol monitoring device and refrain from alcohol consumption during the period in which such prohibition is imposed. The offender must enroll in, and be supervised by, an alcohol safety action program (ASAP) and satisfy all specified requirements. Under such circumstances, the court may grant the offender a restricted license to drive for certain purposes. If the offender is ordered to wear a secure transdermal alcohol monitoring device under the proposed provisions, the only conditions of a restricted license shall be those associated with the ignition interlock device. The proposal creates a Class 1 misdemeanor for tampering with or attempting to circumvent the operation of a secure transdermal monitoring device.

Currently, as a condition of a restricted license, the court must prohibit an individual 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 (DWI). 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 § 18.2-272(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 required by § 46.2-391.01 is also punishable as 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.

Analysis:

Existing data sources do not contain sufficient detail to identify the number of individuals who would be affected by the proposal or to estimate how often they would violate the specified requirements. However, affected offenders who are convicted of driving violations under § 18.2-272 may be sentenced similarly to those currently convicted under § 18.2-272 for operating a motor vehicle while a driver's license is revoked or restricted following a DWI conviction.

According to fiscal year (FY) 2016 and FY2017 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 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 (77%) were given a jail term with a median sentence of one month. Of the 50 offenders who were convicted of an interlock violation under § 18.2-272(C), 54% were sentenced to a jail term. The median sentence length for these offenders was also one month.

Sentencing Guidelines data for FY2016 and FY2017 indicate that 107 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 80 of the cases. Of these, 46.3% were sentenced to a local-responsible (jail) term with a median sentence length of seven months. Another 45.0% were sentenced to state-responsible (prison) terms, for which the median sentence was 1.2 years. The remaining 8.8% did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. For certain individuals, the proposal would limit the number of restrictions associated with a restricted driver's license. For individuals ordered to use a secure transdermal alcohol monitoring device, the only other requirement for a restricted license would be the installation of an ignition interlock device. This could potentially reduce the number of violations of § 18.2-272 that would occur. Conversely, some individuals ordered by the court to wear a transdermal alcohol monitoring device may fail to abide by the requirements, which could result in additional violations of § 18.2-272. The net effect of the proposal on felony convictions cannot be estimated based on currently available data. As a result, the magnitude of the impact on prison beds cannot be quantified.

Local adult correctional facilities. By establishing a new Class 1 misdemeanor and potentially expanding the applicability of existing offenses, 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 impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) 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.

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 836 of the 2017 Acts of Assembly 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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