

## Fiscal Impact Review 2018 General Assembly Session

**Date:** February 6, 2018

**Bill number:** SB 402 (Committee Substitute); Driving under the influence; secure transdermal alcohol monitoring

**Review requested by:** Chairman Hanger, Senate Finance Committee

### JLARC Staff Fiscal Estimates

JLARC staff do not concur with the fiscal impact statements prepared by the Department of Planning and Budget (DPB) and Virginia Criminal Sentencing Commission (VCSC) that SB 402-substitute would result in a fiscal impact of \$50,000 on state adult correctional facilities. The bill is expected to have no fiscal impact on state adult correctional facilities. JLARC staff concur with the fiscal impact statements that there could be a state fiscal impact related to local and regional jails, but the impact cannot be determined. JLARC staff also concur that there would be no fiscal impact on the Department of Motor Vehicles and the Virginia Alcohol Safety Action Program.

SB 402-substitute would provide the court with the option to require individuals convicted of driving under the influence (DUI) to wear a secure transdermal alcohol monitoring device in exchange for a less restrictive driver's license, if requested by the offender. The bill would also create a new Class 1 misdemeanor for tampering with or otherwise circumventing the operation of such a device. The bill would have no fiscal impact on state adult correctional facilities because the Class 1 misdemeanor created by the bill would not constitute a violation of the conditions of a restricted driver's license, and, therefore, would not count toward a Class 6 felony.

*An explanation of the JLARC staff review is included on the pages that follow.*

**Authorized for release:**



**Hal E. Greer, Director**

## Bill summary

Under current law, a judge can revoke or place restrictions on the driver's license of certain offenders convicted of driving under the influence (DUI) and order such an offender only to drive his or her own vehicle that is equipped with a functioning ignition interlock system.

SB 402-substitute would give the judge the additional option, at the offender's request, to order an offender convicted of DUI to wear a secure transdermal alcohol monitoring device in exchange for a less restrictive driver's license. The bill would also create a new Class 1 misdemeanor under § 18.2-270.1 for tampering with or otherwise circumventing the operation of a court-ordered secure transdermal alcohol monitoring device.

## Fiscal implications

SB 402-substitute would not have a fiscal impact on state adult correctional facilities because the Class 1 misdemeanor created under the bill would not count toward a Class 6 felony. (Individuals convicted of Class 6 felonies are usually incarcerated in state adult correctional facilities, and thus, have a state cost.)

The DPB and VCSC fiscal impact statements indicate that an individual who tampers with his or her secure transdermal alcohol monitoring device prior to or while operating a motor vehicle could be prosecuted for a Class 1 misdemeanor under § 18.2-272, which could lead to a Class 6 felony. Section 18.2-272 prohibits the operation of a motor vehicle in violation of the terms of a restricted driver's license or without a court-ordered, functioning ignition interlock system. Section 18.2-272 provides that any third or subsequent conviction for such an offense is a Class 6 felony.

According to staff at the Division of Legislative Services, tampering with or circumventing the operation of a court-ordered device prior to or while operating a motor vehicle would not be subject to prosecution under § 18.2-272. SB 402-substitute would not amend § 18.2-272 to include tampering with a secure transdermal alcohol monitoring device as a violation. In addition, the bill does not make such a device a condition of a restricted driver's license. Section 18.2-272 would have to be amended to specifically prohibit tampering with a court-ordered secure transdermal alcohol monitoring device in order for SB 402-substitute to possibly result in new convictions under this section.

JLARC staff concur with the VCSC and DPB fiscal impact statements that the bill could have a fiscal impact on local and regional adult correctional facilities, but that the impact cannot be determined. New offenders could be incarcerated in local and regional

facilities as a result of the Class 1 misdemeanor that would be created under § 18.2-270.1, but information is not readily available to estimate the number of potential new offenders. According to the DPB fiscal impact statement, the State pays the localities \$4.00 per day for each local-responsible prisoner held in a jail.

JLARC staff also concur that any fiscal impacts created by the bill for the Department of Motor Vehicles and the Virginia Alcohol Action Safety Program could be absorbed by both agencies.

**Budget amendment necessary?**

No

**Agencies affected:**

Department of Corrections, Local and Regional Jails, Department of Motor Vehicles, Virginia Alcohol Safety Action Program

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