



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 541 (Patron – Obenshain)

LD#: 18103173

Date: 1/3/2018

Topic: DWI involuntary manslaughter

#### 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 § 18.2-36.1, relating to the death of another person as a result of driving while intoxicated. Currently, § 18.2-36.1 provides that any person who, as a result of driving under the influence in violation of clause (ii), (iii), or (iv) of § 18.2-266 or any local ordinance substantially similar thereto, unintentionally causes the death of another person is guilty of involuntary manslaughter, a Class 5 felony. Furthermore, if the conduct of the defendant was so gross, wanton, and culpable as to show a reckless disregard for human life, he is guilty of aggravated involuntary manslaughter, a felony punishable by a term of imprisonment of up to 20 years with a one-year mandatory minimum term.

Under the proposal, this provision would be expanded to include unintentionally causing the death of the fetus of another as a result of driving under the influence, which would be punishable as involuntary manslaughter.

#### Analysis:

According to the Virginia Department of Motor Vehicles, there were 1,514 traffic fatalities in the Commonwealth during 2015 and 2016.<sup>1</sup> It is not known how many of these fatalities involved the fetus of another. Existing data sources do not contain sufficient detail to identify the number of individuals who

<sup>1</sup> *Virginia Motor Vehicle Statistics (1981-2016)*, Virginia Department of Motor Vehicles. Accessed November 2, 2017, from <https://www.dmv.virginia.gov/webdoc/pdf/tss03.pdf>.

would be affected if the proposal were enacted. However, affected offenders may be sentenced similarly to those currently convicted under § 18.2-36.1.

Sentencing Guidelines data for fiscal year (FY) 2016 and FY 2017 indicate that 62 offenders were convicted of involuntary manslaughter under § 18.2-36.1. This offense was the primary, or most serious, offense in 60 of the cases. Of these, 91.7% received a state-responsible (prison) term with a median sentence of approximately six years. Another 5% of offenders received a local-responsible (jail) term with a median sentence length of twelve months. The remaining 3.3% did not receive an active term of incarceration to serve after sentencing.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** By expanding the circumstances in which individuals may be convicted under § 18.2-36.1, the proposal may result in increased felony convictions. In this way, the proposal could increase the future state-responsible (prison) bed space needs of the Commonwealth. However, data do not contain sufficient detail to estimate the number of individuals likely to be affected by the proposal. Therefore, the magnitude of the impact cannot be determined.

**Local adult correctional facilities.** Similarly, the impact of the proposal on local-responsible (jail) bed space needs cannot be determined.

**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 § 18.2-36.1 are covered by 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.

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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 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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