

Department of Planning and Budget

2021 Fiscal Impact Statement

1. Bill Number: SB1336E

House of Origin ☐ Introduced ☐ Substitute ☒ Engrossed

Second House ☒ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Stuart

3. Committee: House Courts of Justice

4. Title: Restricted permits to operate a motor vehicle; ignition interlock systems.

5. Summary: The substitute bill clarifies that “criminal case” refers to “any violation of Article 7 (13 § 46.2-852 et seq.) of Chapter 8 of Title 46.2.” This bill provides that in any criminal case where a defendant's license to operate a motor vehicle, engine, or train in the Commonwealth is subject to revocation or suspension and the court orders a defendant, as a condition of probation or otherwise, to enter into and successfully complete an alcohol safety action, the court may, in its discretion and for good cause shown, issue the defendant a restricted license to operate a motor vehicle. The only restriction of such restricted license that the court can impose is to prohibit the defendant from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system for a period of not less than 12 consecutive months without alcohol-related violations of the interlock requirements.

It also prohibits a defendant to enter any alcohol safety action program that is not certified as meeting minimum standards and criteria established by the Commission on the Virginia Alcohol Safety Action Program (VASAP).

This proposal expands the authority of the court to issue the defendant a restricted license to operate a motor vehicle where the only restriction is to prohibit the defendant from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system for a period of not less than 12 consecutive months without alcohol-related violations of the interlock requirements. According to the Department of Motor Vehicles, this type of restricted license is currently restricted to adult defendants whose first offense resulted from a blood alcohol concentration of less than 0.15. The new provision also requires the alcohol safety action program to meet the minimum standards and criteria established by the Commission on the Virginia Alcohol Safety Action Program (VASAP) pursuant to § 18.2-271.2. The new provision also prohibits the person under the restricted license from operating a commercial vehicle while under the restricted license.

6. Budget Amendment Necessary: Yes. Item 402.

7. Fiscal Impact Estimates: Preliminary. See below.

8. Fiscal Implications: The substitute bill does not change the fiscal impact of the bill. The Department of Motor Vehicles (DMV) expects implementation of this new provision to require \$23,117 to fund system programming changes. DMV has indicated that it can absorb the one-time costs related to system programming. In addition, DMV estimates 320 staff hours will be needed to enter license restrictions based on information received from Virginia courts which can be accomplished with existing resources.

This proposal would likely increase the number of persons with restricted licenses that are subject to the ignition interlock system requirements and decrease the number of revoked or suspended licenses. Increasing the number of restricted licenses would likely increase the number of associated crimes. Currently, driving without an ignition interlock system that is required by § 46.2-391.01 (administrative enforcement of ignition interlock requirement) is punishable as a Class 1 misdemeanor under § 18.2-272(C) (driving after forfeiture of license). A third or subsequent violation of any offense established by § 18.2-272 (within 10 years is a Class 6 felony).

However, § 18.2-272 of the Code establishes the penalties for more than just ignition interlock systems violations. The section 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.

The Virginia Criminal Sentencing Commission has determined that existing data do not contain sufficient detail to determine the number of cases that would be affected by the proposed amendments. However, affected offenders 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.

Sentencing Guidelines data for FY 2019 and FY 2020 indicate that 95 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 68 of the cases. Over half (52.9%) of the offenders in these cases received a state-responsible (prison) term for which the median sentence was 1.0 years. Another 36.8% of the offenders received a local-responsible (jail) term with a median sentence length of six months. The remaining 10.3% did not receive an active term of incarceration to serve after sentencing.

According to fiscal year (FY) 2019 and FY2020 General District (Traffic) Court Case Management System (CMS) data, 58.7% of offenders convicted of a Class 1 misdemeanor under § 18.2-272, driving without an ignition interlock system (as the primary, or most serious, offense), were given a local-responsible (jail) term. The median sentence in these cases was one month. 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 § 18.2-270.1,

tamper with, or in any way attempt to circumvent the operation of, an ignition interlock system, most (71.4%) were given a jail term with a median sentence of 20 days.

According to the Virginia Criminal Sentencing Commission analysis, the proposal mainly contains two aspects that may affect the state responsible (prison) bed space needs of the Commonwealth. First, the proposal would limit the number of restrictions placed upon a subset of individuals subject to a restricted license and, therefore, may reduce the number of individuals who would violate the provisions of § 18.2-272. Second, by increasing the mandatory length of time that certain individuals would be subject to ignition interlock requirements (i.e., from no less than 6 months to no less than 12 months), the proposal may increase the period of time that some individuals could be found in violation of § 18.2-272 for failing to comply with ignition interlock requirements. By limiting restrictions, but increasing the length of time the remaining restriction is effective, the proposal may impact the future state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not contain sufficient detail to identify cases that would be affected by the proposal or to estimate the net impact of the proposed legislation; therefore, the impact of the proposal on prison bed space needs cannot be determined. However, any impact is likely to be small.

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 56, 2020 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail and a fine of not more than \$2,500, either or both. For someone convicted of a Class 6 felony, a judge has the option of sentencing the offender to a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both. 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 the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanant or otherwise local-responsible prisoner held in a jail and \$12.00 a day for each state-responsible prisoner. 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 2020), the estimated total state support for local jails averaged \$34.59 per inmate, per day in FY 2019.

9. Specific Agency or Political Subdivisions Affected: Department of Corrections, Department of Juvenile Justice, Department of Motor Vehicles, Local and regional jails, Local law enforcement agencies, Courts, Commonwealth's Attorneys, and Public Defenders Offices.

10. Technical Amendment Necessary: No

11. Other Comments: None