



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 384 *Amendment in the Nature of a Substitute* *(Patrons Prior to Substitute – Norment et al.)*

Date Submitted: 2/2/04

LD #: 04-1175780

Topic: Drive while intoxicated and administrative license suspension

Proposed Change:

The proposal amends § 18.2-270 and other statutes relating to the penalties and suspension of driver's licenses for driving while intoxicated (DWI). The proposal:

- Lowers the blood alcohol level required for additional mandatory minimum penalties to apply in DWI cases -
 - For a first offense, blood alcohol thresholds would drop from .20 to .15 and from .25 to .20 for a 5-day and a 10-day mandatory term to apply, respectively;
 - For a second offense within ten years, blood alcohol thresholds would drop from .20 to .15 and from .25 to .20 for a 10-day and a 20-day mandatory term to apply, respectively;
- Removes the ten-year time limitation for a third or subsequent DWI offense to be elevated to a felony;
- Increases the mandatory minimum penalty for a third DWI conviction from 10 to 30 days or, if it is the third offense committed within 5 years, from 30 to 60 days;
- Clarifies that for the purposes of § 18.2-270, convictions under §§ 18.2-36.1, 18.2-51.4, or 46.2-341.24 are considered to be convictions under § 18.2-266;
- Amends § 19.2-294.1 to specify that, for a person convicted under § 18.2-51.4 or § 18.2-266 who is also charged with reckless driving, the court shall dismiss the reckless driving charge (if the offenses grew out of the same act and are tried simultaneously). Currently, when a person is charged with a violation of § 18.2-51.4 or § 18.2-266 and with reckless driving but convicted of only one of the offenses, the court must dismiss the remaining charge (e.g., the *Code* currently does not specify which offense can be dismissed in these circumstances);
- Provides that the 12-month mandatory minimum associated with violation of § 46.2-391 must not be run concurrent with any other sentence.

Data Analysis:

According to fiscal year (FY) 2000 and FY2001 Pre/Post-Sentence Investigation (PSI) data, 1,124 offenders were convicted under the felony provisions of §§ 18.2-266 and 18.2-270 for a third or fourth DWI offense. According to the FY2001 and FY2002 Local Inmate Data System (LIDS), which contains information on persons confined pre- or post-trial in local jails, there

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were 8,353 convicted under the misdemeanor provisions of the same statutes and 3,494 under provisions that carry a one-year maximum but are not identified as being either a felony or a misdemeanor. Nearly all of these offenders (89 to 97%) were sentenced to some active term of incarceration. See the *Background Sentencing Information* below for more details.

Based on FY2001 PSI data, there were five offenders convicted of a felony under § 46.2-391 for driving under a suspended or revoked license. Of these, three were convicted of an accompanying offense; all three sentences were run consecutive to the felony conviction for driving on a revoked license.

Background Sentencing Information

Felony DWI Crimes	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median State Responsible Sentence
3 rd conviction within 10 years	860	10%	62%	28%	1.2 yrs.
3 rd conviction within 5 years	140	10%	68%	22%	2.0 yrs.
4 th or subsequent conviction within 10 years	124	6%	21%	73%	1.7 yrs.
Drive on revoked license, endangerment or 2 nd or subsequent*	5	0%	0%	100%	2.4 yrs.

Data Source: FY2000 and FY2001 Pre/Post-Sentence Investigation (PSI) database

*Crime was enacted on July 1, 2000.

DWI Crimes not defined as felonies but eligible for a prison sentence	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Local Responsible Sentence
2 nd conviction within 5 years	1,058	2.6%	95.7%	1.7%	15 days
2 nd conviction within 5 to 10 years	2,319	3.5%	95.2%	1.3%	10 days
2 nd conviction within 10 years, blood alcohol level .20 to .25	73	3%	97%	0%	10 days
2 nd conviction within 10 years, blood alcohol level greater than .25	44	5%	95%	0%	14 days

Note: Includes only convictions of those held in the local jail pretrial or sentenced to serve time post-trial.

Data Source: FY2001 and FY2002 Local Inmate Data System (LIDS) database

Misdemeanor DWI Crimes	Number of Cases	% No Incarceration	% Local Responsible	% State Responsible	Median Local Responsible Sentence
1 st conviction	8,254	5.1%	94.2%	.7%	10 days
1 st conviction, blood alcohol level .20 to .25	62	11%	89%	0%	5 days
1 st conviction, blood alcohol level greater than .25	37	0%	100%	0%	10 days

Note: Includes only convictions of those held in the local jail pretrial or sentenced to serve time post-trial.

Data Source: FY2001 and FY2002 Local Inmate Data System (LIDS) database

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The Division of Forensic Sciences of the Department of Criminal Justice Services reported performing 29,499 tests for blood alcohol content (BAC) in 2001. Of those, approximately 28% (8,208) were between .15 and .20; under the proposal, these offenders would become eligible for the additional five or ten-day mandatory minimum penalties for having a high blood alcohol level. Similarly, about 7% (2,031) of the BAC test results were more than .20 up to .25; these offenders would become eligible for the 10 or 20-day mandatory minimum penalties if the proposal is adopted.

Impact of Proposed Legislation:

Because the proposal eliminates the ten-year time limitation for a third or subsequent DWI offense to be elevated to a felony, the proposed legislation will likely increase the state-responsible (prison) bed space needs of the Commonwealth. However, the number of additional felony DWI convictions that may accrue under the proposal cannot be determined. Therefore, the impact of this aspect of the proposal cannot be quantified.

Based on data available from the first year of implementation, it appears that judges are running sentences for violations of § 46.2-391 consecutive to accompanying convictions. Therefore, the aspect of the proposal pertaining to § 46.2-391 is not expected to increase prison bed space needs.

Because the proposed mandatory minimums for third-offense DWI are less than one year, that aspect of the proposal is not expected to impact state-responsible (prison) bed space needs. Nonetheless, there will be an impact on local-responsible (jail) bed space. Based on the methodology (assumptions listed below), there will be an increased need for 18 beds statewide, for a cost to the state of \$198,397 (using FY2002 jail inmate costs) for reimbursement to localities. There would be an additional cost borne by the localities of \$135,010 for the same beds.

No adjustment to the sentencing guidelines would be necessary under the proposal.

Estimated Six-Year Impact in Local-Responsible (Jail) Beds

FY05	FY06	FY07	FY08	FY09	FY10
13	16	17	18	18	18

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 and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary's Committee on Inmate Forecasting in 2003.
2. New cases representing misdemeanor local-responsible sentences were based on forecasts developed by the Virginia Criminal Sentencing Commission using the LIDS database. New cases representing state-responsible felons were based on forecasts approved by the Secretary's Committee on Inmate Forecasting in August 2003.

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3. Cost per prison bed was assumed to be \$22,606 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.***
4. Cost per jail bed was based on The Compensation Board's FY2002 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$29.81 per day or \$10,889 per year. The local cost was calculated by using the daily expenditure cost of \$54.12 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$20.29 per day or \$7,410 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.***

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2004, is phased in to account for case processing time.
2. The bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates for state-responsible felony convictions were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2002. For DWI offenses, this rate was 10.48%. Release dates for local-responsible felony convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by felons sentenced in FY2003 to local jails; this rate was 89.7%. Release dates for misdemeanor convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by misdemeanants sentenced in FY2003 with no accompanying felony conviction; this rate was 39.66%.
3. Additional mandatory minimum terms were applied on a proportional basis. Approximately 28% of those sentenced for a first or second DWI conviction (these were convictions without penalty enhancements for .20 BAC or above) were treated as having been sentenced for having a BAC test result between .15 and .20. These cases were given the additional 5 (1st DWI) or 10 (2nd DWI) day mandatory term. About 7% of the BAC results were more than .20 up to .25. The mandatory term applicable in these cases was increased to 10 days (1st DWI) or 20 days (2nd DWI) as proposed. These estimates were derived from Division of Forensic Sciences data for the 29,499 tests for blood alcohol content (BAC) performed in 2001.

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