



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 1693

#### *Amendment in the Nature of a Substitute (Patron Prior to Substitute – Albo)*

**LD#:** 09-0542404

**Date:** 1/22/2009

**Topic:** Driving While Intoxicated

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
None (\$0)
- **Local Adult Correctional Facilities:**  
None (\$0)
- **Adult Community Corrections Programs:**  
None (\$0)

- **Juvenile Correctional Centers:**  
None (\$0)
- **Juvenile Detention Facilities:**  
None (\$0)

#### Summary of Proposed Legislation:

The proposal modifies language contained in § 18.2-270 requiring that the chemical test used to determine blood alcohol level be administered as provided in Article 2 of Chapter 7 of Title 18.2. Under the proposal, any other chemical test performed on whole blood<sup>1</sup> could also be used to determine an individual's blood alcohol level. A 2008 study, in addition to numerous prior studies, indicates that the ethanol content in certain components of blood (plasma and serum) can be higher than when it is tested using whole blood. The proposal requires that the test be conducted using whole blood. Sections 18.2-268.2 through 18.2-268.7 specify the procedures for taking blood samples from individuals in driving under the influence cases and submitting these samples to the Department of Forensic Science. The Forensic Toxicology section of the Virginia Department of Forensic Science indicates that they use whole blood to perform blood analysis for DUI cases.

The General Assembly has modified § 18.2-270 numerous times over the past several years. Most notable include lowering of the blood alcohol content threshold needed to apply certain mandatory minimum incarceration terms, ensuring that mandatory minimum terms of confinement must be served consecutively, and loosening the requirements for what constitutes a prior qualifying offense for any subsequent offense violations.

#### Analysis:

According to the fiscal year (FY) 2006 and FY2007 Pre/Post-Sentence Investigation (PSI) database, 1,888 offenders were sentenced for a 3<sup>rd</sup> or 4<sup>th</sup> conviction of driving under the influence (DUI) of alcohol in violation of § 18.2-266 during this time period. The 3<sup>rd</sup> or 4<sup>th</sup> conviction for DUI was the primary, or most serious, offense in 1,691 of these cases. Roughly two-thirds (66.2%) of these offenders received a local-responsible (jail) sentence, with a median sentence of 6 months. For the 30.7% of offenders who were given a state-responsible (prison) term, the median sentence was 1.5 years.

<sup>1</sup> According to the American Cancer Society, whole blood contains all parts of the blood prior to separation.

According to the calendar year (CY) 2006 and CY2007 General District Court Automated Information System (CAIS) database, 46,987 offenders were sentenced for a 1<sup>st</sup> or 2<sup>nd</sup> conviction of DUI involving alcohol during this time period as the primary, or most serious, offense. Nearly half (46.4%) were sentenced to a jail term with a median sentence of 10 days. The remaining 53.6% were not given an active term of incarceration to serve after sentencing.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposal clarifies certain procedural aspects of § 18.2-270. The proposed changes are not expected to increase the number of persons convicted under § 18.2-266, nor are those sentences expected to increase with this new evidentiary rule. Therefore, future state-responsible (prison) bed space needs of the Commonwealth are not expected to increase.

**Local adult correctional facilities.** The proposal is not expected to increase local-responsible (jail) bed space needs of the Commonwealth.

**Adult community corrections resources.** The proposal is not expected to increase the need for adult community corrections resources.

**Virginia's sentencing guidelines.** Most felony convictions under § 18.2-266 are covered by the sentencing guidelines. No adjustment to the guidelines would be necessary under the proposal.

**Juvenile correctional centers.** According to the Department of Juvenile Justice, the proposal is not expected to increase juvenile correctional center bed space needs.

**Juvenile detention facilities.** According to the Department of Juvenile Justice, the proposal is not expected to increase bed space needs of juvenile detention facilities.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

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