



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 775 **(Patron – Cleaveland)**

LD #: 10103338

Date: 12/29/2009

Topic: Driving while intoxicated resulting in serious bodily injury

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 781 of the 2009 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

Currently, under § 18.2-51.4, any person who, as a result of driving while intoxicated in a manner so gross, wanton and culpable as to show reckless disregard for human life, unintentionally causes serious bodily injury to another resulting in permanent and significant physical impairment is guilty of a Class 6 felony. The proposal removes the requirement that permanent and significant physical impairment occur for the offense to be prosecuted as a Class 6 felony.

Analysis:

The fiscal year (FY) 2007 and FY2008 Pre/Post-Sentence Investigation (PSI) database indicates that 27 offenders were convicted of an offense under § 18.2-51.4 during this time period. This offense was the primary, or most serious, offense in 22 of these cases. Of the 22 cases, nearly three-fourths (71%) of the offenders were given a state-responsible (prison) term, with a median sentence of 2.5 years. For the 24% of offenders who were given a local-responsible (jail) term, the median sentence was eight months.

According to the fiscal year (FY) 2008 and FY2009 Sentencing Guidelines database, 1,740 offenders were sentenced for a third or subsequent conviction under § 18.2-266 for DWI within 5 or 10 years. The DWI was the primary, or most serious, offense in 1,487 of these cases. The majority (74%) of these offenders were sentenced to a local-responsible (jail) term, with a median sentence of six months. For the 25% who were given a state-responsible (prison) term, the median sentence was 1.3 years.

According to calendar year (CY) 2007 and CY2008 Local Inmate Data System (LIDS) data, a misdemeanor DWI was the most serious offense for 24,077 offenders held pre- or post-trial in jail during this time period. Almost all (89%) were sentenced to a jail term, with a median sentence length of 10 days, while 9.2% did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. Because it expands the applicability of a felony offense, the proposal may have an impact on the future state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal. Therefore, the impact of the proposal cannot be quantified.

Local adult correctional facilities. Since a felony conviction can result in a sentence to be served in a local or regional jail, the proposal may have an impact on future local-responsible (jail) bed space needs. However, the magnitude of the impact cannot be determined with existing data.

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. The sentencing guidelines do not cover convictions under § 18.2-51.4(A) as the primary (or most serious) offense. Such a conviction, however, may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

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

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

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 781 of the 2009 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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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