



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 1601

(Patron – Peace)

LD #: 11101958

Date: 12/20/2010

Topic: Involuntary manslaughter and driving without a license

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$72,370 (3 beds)
- **Local Adult Correctional Facilities:**  
None (\$0)
- **Adult Community Corrections Programs:**  
None (\$0)

- **Juvenile Correctional Centers:**  
Cannot be determined
- **Juvenile Detention Facilities:**  
Cannot be determined

#### Summary of Proposed Legislation:

Currently, under § 18.2-36.1, any person who unintentionally causes the death of another person as the result of driving while intoxicated is guilty of a Class 5 felony (punishable by imprisonment of 1 to 10 years). If the offender was driving in a manner so gross, wanton and culpable as to show reckless disregard for human life, he or she is guilty of aggravated involuntary manslaughter, a felony punishable by up to 20 years in prison with a mandatory minimum term of one year. Under the proposal, aggravated involuntary manslaughter would be expanded to include instances in which a driver unintentionally causes the death of another person while operating a motor vehicle without a license or while his or her license is suspended or revoked.

#### Analysis:

According to fiscal year (FY) 2009 and FY2010 Sentencing Guidelines data, 70 offenders were sentenced for involuntary manslaughter under § 18.2-36. An additional 43 offenders were sentenced for involuntary manslaughter related to driving while intoxicated under § 18.2-36.1(A). Of the total 113 offenders, three were also convicted of driving without a license under § 46.2-300 or driving with a suspended or revoked license. All three of these offenders were sentenced to state-responsible (prison) terms of 2, 2.8, and 5 years, respectively.

Sentencing Guidelines data for FY2009 and FY2010 also indicate that 32 offenders were sentenced for aggravated involuntary manslaughter under § 18.2-36.1(B) during this time period. The aggravated involuntary manslaughter conviction was the primary, or most serious, offense in 31 of these cases. All of these offenders received a state-responsible (prison) term, with a median sentence of 7.5 years.

#### Impact of Proposed Legislation:

**State adult correctional facilities.** By expanding the applicability of a felony statute that provides for a mandatory minimum term of imprisonment and a higher maximum term of incarceration, the

proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. The impact is estimated to be three beds by FY2017. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$72,370.

**Estimated Six-Year Impact in State-Responsible (Prison) Beds**

FY12	FY13	FY14	FY15	FY16	FY17
0	0	0	1	2	3

**Local adult correctional facilities.** The proposal is not expected to increase the future need for local-responsible (jail) beds.

**Adult community corrections resources.** The proposal is not expected to increase the need for community corrections resources and will likely delay the need for services for offenders affected by the proposal, as they will most likely be staying in prison longer prior to being released to the community.

**Virginia’s sentencing guidelines.** Felony convictions under § 18.2-36.1(B) 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 (DJJ), the effect of the proposal on juvenile correctional center (JCC) 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 is \$72,370 for periods of imprisonment in state adult correctional facilities. 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.**

**Assumptions underlying the analysis include:**

**General Assumptions**

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety’s Committee on Inmate Forecasting in 2010.
2. Cost per prison bed was assumed to be \$27,065 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.*
3. Cost per jail bed was based on The Compensation Board’s FY2009 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.86 per day or \$10,541 per year. The local cost was calculated by using the daily expenditure cost of \$87.30 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 \$45.75 per day or \$16,712 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 sentencing**

1. The impact of the proposed legislation, which would be effective on July 1, 2011, is phased in to account for case processing time.

2. Offenders subject to the proposed mandatory minimum sentence were assumed to serve the mandatory minimum term specified in the proposal. If an offender was convicted of multiple counts, the mandatory minimum terms were assumed to run consecutively.<sup>1</sup>
3. To gauge the impact on sentencing, it was assumed that the distribution of sentences for the affected cases will be similar to the distribution of sentences under the existing provision for aggravated involuntary manslaughter under § 18.2-36.1(B).
4. Release dates were estimated based on the average rates at which inmates in the Department of Corrections' facilities were earning sentence credits as of December 31, 2009. For manslaughter, this rate was 11.4%.

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<sup>1</sup> Recent analysis revealed that, in 96.9% of cases, judges set multiple mandatory minimum sentences to run consecutively (*2010 Annual Report* of the Virginia Criminal Sentencing Commission).