



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1018 (Patron – Puckett)

LD#: 11102220

Date: 12/14/2010

Topic: Death resulting from illegal auto racing

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$47,273 (2 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:

The proposal amends § 46.2-865.1 to increase the mandatory minimum term of incarceration for offenders involved in illegal auto races that result in the death of another person. Under current *Code*, causing a death in this manner is punishable by imprisonment of one to twenty years and is subject to a mandatory minimum sentence of one year. Under the proposal, the mandatory minimum penalty would be increased to 20 years.

The 2004 General Assembly created § 46.2-865.1, which made participation in an illegal auto race a Class 6 felony if it results in serious injury to another person who was not participating in the race. The 2006 General Assembly amended this statute to create an enhanced penalty (imprisonment of 1 to 20 years, with a mandatory minimum sentence of 1 year) for offenders involved in an illegal auto race that results in death. Prior to 2006, offenders who committed this act were prosecuted for involuntary manslaughter, which carries a maximum penalty of ten years. If the offender was racing under the influence of alcohol or drugs, in violation of § 18.2-266, prosecution could proceed under the aggravated involuntary manslaughter statute.

Analysis:

According to fiscal year (FY) 2009 and FY2010 Circuit Court Automated Information System (CAIS) data, two offenders were convicted of a felony for causing the death of another person while engaging in illegal auto racing under § 18.2-865.1(A2). The offenders were codefendants and each received a state-responsible (prison) term of 4.0 years.

Impact of Proposed Legislation:

State adult correctional facilities. By increasing the specified mandatory minimum term of incarceration from 1 year to 20 years, the proposal is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. The impact is estimated to be two beds by FY2017. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$47,273.

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

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

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 be staying in prison longer prior to being released to the community.

Virginia's sentencing guidelines. Convictions under § 46.2-865.1(A2) are not covered by the current sentencing guidelines as the primary (most serious) offense in a case. Such a conviction, however, could 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, the impact of the proposal on juvenile correctional center bed space needs cannot be determined.

Juvenile detention facilities. According to the Department of Juvenile Justice, the impact of the proposal on the bed space needs of juvenile detention facilities cannot be determined.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$47,273 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.¹
3. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2009. For non-violent offenses, this rate was 11.5%.

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¹ 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).