



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1181 (Patron – Norment)

LD #: 11103448

Date: 1/7/2011

Topic: Driving while intoxicated resulting in serious bodily injury

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$241,609 (9 beds)
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

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

Summary of Proposed Legislation:

The proposal amends § 18.2-51.4 to increase the penalty for driving while intoxicated (DWI) when it results in the permanent and significant physical impairment (maiming) of another; under the proposal, the penalty for that offense would increase from a Class 6 to a Class 4 felony. In addition, the proposal defines a new Class 6 felony for DWI that results in the serious bodily injury (but not permanent and significant physical impairment) of another.

Analysis:

According to the Circuit Court Automated Information System (CAIS) for fiscal years (FY) 2009 and 2010, there were 24 cases in which the primary (or most serious) conviction was DWI resulting in the permanent and significant physical impairment of another (§ 18.2-51.4). Over half (58%) of the offenders were given a state-responsible (prison) term, for which the median sentence was two years. For the 29% of offenders who were given a local-responsible (jail) term, the median sentence was eight months. The remaining 13% were not given an active term of incarceration to serve. During this time period, none of the offenders were sentenced to the current statutory maximum of five years.

According to the Department of Juvenile Justice (DJJ), in the past three fiscal years (FY2008-FY2010), there has been one juvenile with a petitioned intake for DWI resulting in the permanent and significant physical impairment of another (§ 18.2-51.4).

Impact of Proposed Legislation:

State adult correctional facilities. By defining a new felony offense and raising the penalty for an existing felony, the proposal is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. The number of additional felony convictions that may result from the proposed Class 6 felony for DWI resulting in serious bodily injury cannot be estimated; therefore, the impact of this aspect of the proposal cannot be quantified. However, the impact of increasing the penalty for the

existing crime of DWI resulting in permanent and significant physical impairment can be estimated. The impact of this aspect of the proposal is expected to be nine prison beds by FY2017. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$241,609.

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

FY12	FY13	FY14	FY15	FY16	FY17
1	3	4	6	8	9

Local adult correctional facilities. The proposal is expected to impact the local-responsible (jail) population in two ways. First, the addition of the proposed Class 6 felony will increase the need for jail beds. Second, raising the penalty for the existing felony offense could reduce the need for jail beds, as some offenders will receive a prison sentence instead of the jail term they have in the past. The net effect of the proposal is expected to increase the need for jail beds; however, the magnitude of the impact cannot be quantified.

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. However, 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 creation of a new Class 6 felony could increase juvenile correctional center (JCC) bed space needs; however, the impact of this aspect of the proposal cannot be quantified. Raising the penalty for the existing felony (from a Class 6 to a Class 4 felony) will not affect the Department’s Length-of-Stay guidelines and is, therefore, not expected to have an impact on JCC bed space needs.

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.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$241,609 for periods of imprisonment in state adult correctional facilities and 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. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety’s Committee on Inmate Forecasting and approved in 2010.
3. 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.*

4. 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. To gauge the impact of increasing the penalty for the existing crime of DWI resulting in permanent and significant physical impairment, it was assumed that the distribution of sentences for the affected cases will be similar to the distribution of sentences for all Class 4 felonies currently defined in the *Code of Virginia*.
3. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. 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 assaults, this rate was 10.9%.

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