



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1258

(Patron – Miller)

LD#: 12104085

Date: 1/20/2012

Topic: Ignition interlock systems

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 890 of the 2011 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposed legislation amends several sections of the *Code* relating to ignition interlock systems and driving on a revoked, suspended, or restricted license after having been convicted of certain offenses. Under the proposed changes to § 18.2-270.1, a person who is convicted of driving while intoxicated (DWI) would be prohibited, as a condition of license restoration under subsection C of § 18.2-271.1 or 46.2-391, from operating a motor vehicle that is not equipped with an ignition interlock system for six months after the end of the mandatory one-year license revocation for a first offense and for one year after the three-year license revocation for a second offense. Currently, § 18.2-270.1 specifies that, as a condition of a restricted license or license restoration, offenders who have been convicted of a second or subsequent DWI offense or whose blood alcohol content (BAC) was 0.15 percent or more may only operate a motor vehicle if it is equipped with an ignition interlock system. Under § 18.2-271.1, the operator's license of an offender who has been convicted of a second DWI offense within 10 years may be restored after the three-year license revocation period, but the restoration is conditioned upon the installation of an ignition interlock system for a period of six months. For individuals convicted of a second DWI offense, the proposal increases the time period requiring ignition interlock from six months to one year.

Section 18.2-271.1 also requires that certain individuals convicted of driving while intoxicated participate in a rehabilitative program. As part of an offender's participation in a program under this section, he or she may be issued a restricted driver's license for a limited number of purposes, including travelling to and from work, to and from school, and for health care services. The proposal replaces the list of approved purposes currently specified in § 18.2-271.1 with language that would allow offenders to apply for an ignition interlock permit, conditioned upon the installation and maintenance of a functioning ignition interlock system on each motor vehicle that will be operated by the offender. The proposal would allow offenders who have been convicted of a third or subsequent offense for driving while

intoxicated to participate in a rehabilitative program and apply for an ignition interlock permit, pursuant to § 18.2-271.1. Currently, § 18.2-271.1 prohibits the issuance of a restricted license during the first four months of a revocation if the license was revoked due to a second DWI conviction within 10 years. If the license was revoked due to a second DWI conviction within 5 years, a judge cannot issue a restricted license within the first year and, if the license was revoked due to a third or subsequent DWI conviction, a judge cannot issue a restricted license during the revocation period. Under the proposal, an offender convicted under any of the above circumstances could apply for an ignition interlock permit.

The proposal also modifies restrictions regarding the installation of ignition interlock systems. Specifically, the proposal requires that a functioning ignition interlock system be installed on one or more of the motor vehicles that will be operated by an eligible offender. Currently, an ignition interlock system must be installed on all of the motor vehicles owned by or registered to the offender. Under the proposal, certain fees would be collected from offenders convicted of driving while intoxicated for the Ignition Interlock Assistance fund. In addition, the proposal increases several other fees related to driving while intoxicated and ignition interlock systems.

Section 46.2-389 outlines certain circumstances under which the Commissioner of the Department of Motor Vehicles must revoke a driver's license. Specifically, if an individual is convicted of certain offenses, including fraud offenses relating to the Department of Motor Vehicles, felonies involving a motor vehicle, driving while intoxicated, and driving after the driver's license was forfeited for a DWI, the Commissioner must revoke the offender's driver's license for one year. Pursuant to § 46.2-391, an individual's driver's license must be revoked for three years if he or she is found guilty of a second DWI or driving after his or her driver's license has been forfeited for a DWI within 10 years. If an individual is found guilty of manslaughter resulting from driving a motor vehicle or driving while intoxicated resulting in the serious physical impairment of another, the driver's license must be revoked for at least five years. If an individual is convicted of three offenses arising out of separate incidents or occurrences within 10 years for driving a motor vehicle while intoxicated, his or her license is revoked for at least five years. A judge may issue a restricted driver's license in certain cases. Under § 46.2-391, an offender who violates the driving prohibition or license restrictions required by this section is guilty of a Class 1 misdemeanor if the driving does not endanger others. If the driving endangers others, occurs in conjunction with certain DWI offenses, or is the second or subsequent violation, the offender is guilty of a felony punishable by up to five years imprisonment and a mandatory minimum term of one year. Under the proposal, these penalties would apply to offenders whose licenses were revoked pursuant to § 46.2-391(A) or (B) or who violate the terms of any ignition interlock permit issued under § 46.2-391(C).

Under § 18.2-271, the driver's license of an offender who is convicted of a first offense for driving while intoxicated is automatically suspended for one year from the conviction date. Offenders who are convicted of a second DWI within 10 years lose their driving privilege for three years and offenders convicted of a third or subsequent DWI offense within 10 years lose their driving privilege for at least five years. A judge may issue a restricted driver's license if certain criteria are met. Section 18.2-272 of the *Code* establishes penalties for operating a motor vehicle while a driver's license is revoked or restricted after a DWI conviction. It is a Class 1 misdemeanor to drive or operate a motor vehicle, engine, or train in violation of a revoked or restricted license under § 18.2-272(A). If an individual whose driver's license was revoked or restricted as the result of a DWI conviction operates a motor vehicle with a blood alcohol content of .02 percent or more or drives without the required ignition interlock system, he or she is guilty of a Class 1 misdemeanor. A third or subsequent violation of § 18.2-272 is a Class 6 felony. As described above, § 46.2-391 provides separate penalties for individuals who violate the conditions of a revoked or restricted license issued under that section.

The General Assembly has revised statutes relating to ignition interlock systems and driving on a revoked or restricted license after a DWI conviction several times in recent years. For instance, the 2004 General Assembly created the requirement under § 18.2-270.1 that, as a condition of a restricted license or as a

condition of license restoration, an offender who is convicted of a second or subsequent DWI offense or an offense involving a BAC of 0.15 percent or more may only operate a motor vehicle if it is equipped with an ignition interlock system. In 2004 and 2005, the General Assembly added and modified the restriction in § 18.2-272 relating to driving with a blood alcohol content of .02 percent or more. The 2006 General Assembly increased a third violation of § 18.2-272 within 10 years from a Class 1 misdemeanor to a Class 6 felony and the 2007 General Assembly altered the language relating to this felony. In 2009, the General Assembly added subsection C to § 18.2-272, which makes it a Class 1 misdemeanor to drive or operate a motor vehicle without a certified ignition interlock system if one is required.

Analysis:

According to fiscal year (FY) 2010 and FY2011 General District Court Automated Information System (CAIS) data, 4,168 offenders were convicted of a Class 1 misdemeanor under § 18.2-272(A) for driving on a revoked or restricted license after a DWI conviction. While 39.3% of these offenders did not receive an active term of incarceration, the majority (60.7%) were sentenced to a local-responsible (jail) term, for which the median sentence was approximately one month. Three of these offenders were also convicted of driving on a restricted license with a blood alcohol content greater than .02 percent on the same date and eight offenders were also convicted of an ignition interlock violation. An additional 292 offenders were convicted under § 18.2-272(B) for driving on a revoked or restricted license with a blood alcohol content greater than .02 percent. Of these, 25.7% did not receive an active term of incarceration and the remaining 74.3% received a jail term, with a median sentence of one month. Of the 32 offenders who were convicted of a misdemeanor interlock violation under § 18.2-272(C), 65.6% did not receive an active term of incarceration to serve after sentencing. The remaining eleven offenders were sentenced to a jail term, with a median sentence length of one month.

According to FY2010 and FY2011 Circuit Court CAIS data, 47 offenders were convicted of a felony for a third or subsequent violation of § 18.2-272. This offense was the primary, or most serious, offense in 33 of the cases. Of these, eight offenders (24.2%) did not receive an active term of incarceration to serve after sentencing. More than half (51.5%) were sentenced to a local-responsible (jail) term, with a median sentence length of six months. The remaining eight offenders were sentenced to state-responsible (prison) terms, for which the median sentence was 1.3 years.

The Department of Juvenile Justice (DJJ) Court Service Units serve as the point of entry into the juvenile justice system. An “intake” occurs when a juvenile is brought before a court service unit officer for one or more alleged law violations. DJJ reports averaging approximately one intake petition per year for the three most recent fiscal years (FY2009 to FY2011) for a violation of § 18.2-272 involving a person under the age of 18. No juveniles were committed to DJJ under § 18.2-272 during the three-year period.

Impact of Proposed Legislation:

State adult correctional facilities. By increasing the number of offenders who would be required to install and maintain ignition interlock systems and expanding the period during which certain offenders may be subject to the ignition interlock requirement, the proposal may increase the number of convictions for failing to comply with ignition interlock requirements. By expanding the number of individuals who may be subject to the misdemeanor provisions of § 18.2-272, the proposal may increase the number of individuals who will be convicted of three violations of the section within 10 years and therefore become subject to the felony provision. In addition, the proposal may increase the number of offenders who are subject to the felony provisions of § 46.2-391. As a result, the proposal could increase the future state-responsible (prison) bed space needs of the Commonwealth. However, the number of additional felony convictions that may result from the proposal cannot be estimated; therefore, the impact of the proposal on prison bed space cannot be determined.

Local adult correctional facilities. Similarly, the proposal may have an impact on local-responsible (jail) bed space needs but the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in additional felony convictions and subsequent supervision requirements for some offenders, the proposal may increase the need for adult community corrections resources. The potential impact on community corrections programs, however, cannot be determined.

Virginia's sentencing guidelines. The sentencing guidelines cover three specific felony DWI offenses under § 18.2-266 and all felony violations of § 46.2-391 processed in Virginia's circuit courts. Felony convictions under § 18.2-272 are not covered by the guidelines as the primary (or most serious) offense; however, such convictions could augment the 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 proposal is not expected to increase juvenile correctional center bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that 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 890 of the 2011 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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