



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1559
Amendment in the Nature of a Substitute
(Patron Prior to Substitute – Morris)

LD#: 13104519

Date: 1/24/2013

Topic: Driving while intoxicated

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 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends § 18.2-270 to expand the circumstances under which an individual may be convicted of a felony for a second or subsequent conviction for driving while intoxicated (DWI). Currently, a third or subsequent DWI offense committed within 10 years is a Class 6 felony and certain mandatory minimum penalties apply. Under the proposal, any individual who has previously been convicted of driving or boating while intoxicated resulting in the death or serious injury of another or a felony violation for DWI is subject to a Class 6 felony for any subsequent DWI conviction. Individuals convicted under the proposed § 18.2-270(C)(2) would be subject to a mandatory minimum penalty of one year imprisonment and a fine of \$1,000.

The proposal also modifies §§ 18.2-271 and 46.2-391, relating to forfeiture of one's driver's license following convictions for driving while intoxicated, to include any felony DWI conviction. The proposed changes to these statutes may lengthen the period during which certain offenders' licenses must be revoked. Under § 46.2-391, an individual 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. Section 18.2-272 of the *Code* establishes base penalties for operating a motor vehicle while a driver's license is revoked or restricted after a conviction for driving while intoxicated pursuant to § 18.2-271.

Analysis:

According to fiscal year (FY) 2011 and FY2012 Sentencing Guidelines data, 220 offenders were sentenced for a fourth or subsequent DWI conviction in violation of § 18.2-266. The fourth or

subsequent DWI conviction was the primary, or most serious, offense in 172 of these cases. Of those, more than 92% received a state-responsible (prison) term with a median sentence of 1.5 years.

Sentencing Guidelines data also indicate that 1,383 offenders were convicted of a Class 6 felony for a third violation of § 18.2-266 within five or ten years. The DWI was the primary, or most serious, offense in 1,183 cases. The majority (80.6%) of these offenders received a local-responsible (jail) term with a median sentence of six months. Slightly more than 17% of the offenders received a state-responsible (prison) term with a median sentence of one year and three months.

Available data do not contain sufficient detail to determine the number of cases that would be affected by the proposal.

Impact of Proposed Legislation:

State adult correctional facilities. Because additional offenders would be eligible for felony prosecution, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing databases do not provide sufficient detail to estimate the number of new felony convictions likely to result from enactment of the proposal. As a result, the magnitude of the impact on prison bed space needs cannot be quantified.

Local adult correctional facilities. The proposal may also increase the local-responsible (jail) bed space needs of the Commonwealth. However, the magnitude of the impact cannot be determined.

Adult community corrections resources. Because the proposal could result in additional 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. As a new felony offense, convictions under the proposed § 18.2-270(C)(2) would not be covered by the sentencing guidelines as the primary, or most serious, offense. A conviction for this offense, however, could augment the guidelines recommendation if the most serious offense at conviction is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. The Department of Juvenile Justice reports that this proposal would have no impact on bed space needs for juvenile correctional centers.

Juvenile detention facilities. The Department of Juvenile Justice reports that this proposal would have no impact on juvenile detention center bed space needs.

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 3 of the Acts of Assembly of 2012, Special Session I, 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 confinement to the custody of the Department of Juvenile Justice.