



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 1103

(Patron – McDougle)

LD#: 13103136

Date: 1/3/2013

Topic: Issuance of restricted license after 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:**  
Cannot be determined
- **Juvenile Detention Facilities:**  
Cannot be determined

\* 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 modifies §§ 18.2-271.1 and 18.2-272, relating to the issuance of a restricted license after a conviction for driving while intoxicated (DWI). Section 18.2-271.1 currently 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.

Under the proposed modifications to § 18.2-271.1, judges would be allowed to issue a restricted license that is not limited to the purposes listed in § 18.2-271.1(E). Instead of the existing restricted license, the court could issue a license with different conditions if the offender is convicted of a first offense DWI under certain circumstances. In order for the court to issue a restricted license under the proposed § 18.2-271.1(F), the court must (i) sentence the offender to 12 months and place him on probation for any portion of the sentence for which he is not incarcerated, (ii) require the defendant to refrain from alcohol consumption for the duration of the sentence and probationary period, (iii) require the defendant to wear a secure transdermal alcohol monitoring device, and (iv) require the person to pay all costs associated with the device. Each of these criteria would become conditions of probation for the offender and any violation thereof could result in a revocation of probation on the misdemeanor DWI offense.

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. 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.

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**Analysis:**

According to fiscal year (FY) 2011 and FY2012 Sentencing Guidelines data, 27 offenders were convicted of a felony for a third or subsequent violation of § 18.2-272. This offense was not the primary, or most serious, offense in any of the cases. This violation was most frequently accompanied by a felony conviction under § 18.2-266 for driving while intoxicated after two or more prior convictions within five or ten years.

According to FY2011 and FY2012 General District (Traffic) Court Case Management System (CCMS)<sup>1</sup> data, the majority (56.9%) of offenders whose primary, or most serious, offense was a misdemeanor violation of § 18.2-272(A) for driving on a revoked or restricted license received a local-responsible (jail) term with a median sentence of approximately one month. The remaining 43.1% did not receive an active term of incarceration to serve after sentencing.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposal allows for the issuance of a different type of restricted license following a first conviction for driving while intoxicated. Unlike restricted licenses issued under existing provisions, the restricted license described in the proposed § 18.2-271.1(F) does not limit the purposes for which an offender may operate a motor vehicle. However, the alternate restricted license included in the proposal contains stricter provisions relating to alcohol consumption and the use of an alcohol monitoring device. To the extent that the proposal could result in any additional felony convictions for driving in violation of the conditions of a restricted driver's license under § 18.2-272, the proposal may 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 resources.** If the proposal results in additional felony convictions and subsequent supervision requirements for additional offenders, the proposal may increase the need for adult community corrections resources. However, the potential impact on state and local community corrections programs cannot be determined.

**Virginia's sentencing guidelines.** The sentencing guidelines cover felony violations of § 18.2-272(A) that are processed in Virginia's circuit courts. No adjustment to the guidelines would be necessary under the proposal.

**Juvenile correctional centers.** The Department of Juvenile Justice (DJJ) reports that the proposal may have an impact on juvenile correctional center bed space needs. However, the actual impact cannot be determined.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that, while the proposal may have an impact on juvenile detention bed space needs, the actual impact cannot be determined.

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**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**

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<sup>1</sup> Formerly referred to as the Court Automated Information System (CAIS).

**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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

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