



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 487 (Patron – Norment)

LD #: 14100993

Date: 11/26/2013

Topic: Driving or boating while intoxicated resulting in serious bodily injury

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$299,722 (10 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.

The proposed modifications to § 18.2-51.5, relating to operating a watercraft while intoxicated resulting in the maiming of another, mirror the proposed changes to § 18.2-51.4.

Analysis:

According to fiscal year (FY) 2012 and FY2013 Circuit Court Case Management System (CMS) data, 38 offenders were sentenced for driving while intoxicated resulting in serious bodily injury in violation of § 18.2-51.4 during this time period. The DUI maiming conviction was the primary, or most serious, offense in 25 of the cases. Of these, more than half (56%) received a state-responsible (prison) term, for which the median sentence was 2.5 years. Ten offenders (40%) were sentenced to a local-responsible (jail) term, with a median sentence of three months. The remaining offender did not receive an active term of incarceration to serve after sentencing. During this time period, two of the offenders were sentenced to the current statutory maximum of five years for this offense.

According to the Circuit Court Case Management System (CMS) for FY2011 through FY2013, one offender was convicted of a Class 6 felony under § 18.2-51.5 for operating a watercraft while intoxicated resulting in the maiming of another. This offender was sentenced in FY2011 and the primary, or most serious, offense in this sentencing event was aggravated involuntary manslaughter (§ 18.2-36.2(B)).

Regarding 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. The DJJ reports averaging roughly one intake petition for each of the last five fiscal years (FY2009 through FY2013) for a violation of § 18.2-51.4 by a person under the age of 18. According to DJJ, there were no petitioned intake cases for a violation of § 18.2-51.5 between FY2009 and FY2013. For the same five-year period, the DJJ reports that no juveniles were committed to the Department by the Juvenile and Domestic Relations District Court (J&DR) for a violation of §§ 18.2-51.4 or 18.2-51.5.

Impact of Proposed Legislation:

State adult correctional facilities. By defining new felony offenses and raising the penalty for existing felonies, 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 felonies for driving or boating while intoxicated 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 driving or boating while intoxicated resulting in permanent and significant physical impairment can be estimated. The impact of this aspect of the proposal is expected to be ten prison beds by FY2020. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$299,722.

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

FY15	FY16	FY17	FY18	FY19	FY20
1	3	5	7	9	10

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 cover convictions under § 18.2-51.4(A) for driving while intoxicated resulting in the permanent and significant physical impairment of another as the primary (or most serious) offense. Cases in which a conviction under § 18.2-51.5 is the primary offense, however, are not covered by the current sentencing guidelines. 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. In addition, raising the penalty for the existing felony offenses (from a Class 6 to a Class 4 felony) would affect the Department’s Length-of-Stay guidelines and, therefore, may also have an impact on JCC bed space needs. However, the exact impact of the proposal on JCC bed space needs cannot be quantified.

Juvenile detention facilities. While the Department of Juvenile Justice reports that the impact on the bed space needs of juvenile detention facilities cannot be determined, it is important to note that raising the penalty for the existing felony offenses (from a Class 6 to a Class 4 felony) may affect the Detention Assessment Instrument (DAI) score of the juvenile at intake, which could potentially result in more detainments or admissions.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$299,722 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 2013.
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 2013.
3. Cost per prison bed was assumed to be \$30,006 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 FY2012 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$28.04 per day or \$10,242 per year. The local cost was calculated by using the daily expenditure cost of \$73.83 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 \$41.30 per day or \$15,085 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, 2014, 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 Class 4 felony person offenses currently defined in the *Code of Virginia* and covered by the sentencing guidelines.
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, 2012. For assaults, this rate was 9.3%.

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