



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2260 (Patron – Lindsey)

LD#: 15100813

Date: 1/2/2015

Topic: Driving under the influence

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Programs:**
None (\$0)

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

* Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposed legislation amends § 18.2-271.1, relating to restricted licenses issued following convictions for driving while intoxicated (DWI).

Currently, § 18.2-271.1 permits the court to issue a restricted license following a conviction for driving while intoxicated if certain conditions are met. The provisions of § 18.2-271.1(D) apply to offenders whose licenses are subject to revocation under §§ 46.2-389 and 46.2-391(A) due to a conviction for driving while intoxicated under the laws of another state. The proposal would expand the instances in which a court may issue a restricted license to include cases where the offender was convicted of driving while intoxicated in violation of the laws of the United States. This modification would affect offenders who were convicted of driving while intoxicated on federal property, such as national parks and military bases. Sections 46.2-389 and 46.2-391(A) require that the licenses of offenders who have been convicted of certain DWI offenses be revoked for one year or three years, depending on the circumstances of the offense and the offender's prior record.

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. Under § 18.2-272(A)(iii), it is a Class 1 misdemeanor to drive or operate a motor vehicle, engine, or train in violation of a restricted license issued pursuant to § 18.2-271.1. Per § 18.2-272(A)(iv), any individual who drives after his or her license has been revoked under §§ 46.2-389 or 46.2-391 is also guilty of a Class 1 misdemeanor. If an individual whose driver's license was revoked or restricted as the result of a DWI conviction operates a motor vehicle with a blood alcohol content of .02 percent or more or drives without the required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.

Analysis:

According to fiscal year (FY) 2013 and FY2014 General District (Traffic) Court Case Management System (CMS) data, 55% of offenders convicted of a Class 1 misdemeanor under § 18.2-272(A) for

driving on a revoked or restricted license after a DWI conviction (as the primary, or most serious, offense) were given a local-responsible (jail) term. The median sentence in these cases was approximately 20 days. The remaining offenders did not receive an active term of incarceration to serve after sentencing. For offenders whose primary offense was a misdemeanor violation of § 18.2-272(B) for driving on a revoked or restricted license with a blood alcohol content greater than .02 percent, most (81.7%) were sentenced to a jail term with a median sentence of one month. Of the 46 offenders who were convicted of an interlock violation under § 18.2-272(C), 65.2% were sentenced to a jail term. The median sentence length for these offenders was one month.

The Sentencing Guidelines Database for FY2013 and FY2014 indicates that 75 offenders were convicted of a felony for a third or subsequent violation of § 18.2-272. This was the primary, or most serious, offense in 56 of the cases. Most (60.7%) of these offenders were sentenced to a local-responsible (jail) term, with a median sentence length of six months. While one offender did not receive an active term of incarceration to serve after sentencing, the remaining 37.5% were sentenced to state-responsible (prison) terms, for which the median sentence was 1.1 years.

According to the Virginia Department of Motor Vehicles, in FY2014, 218 individuals' licenses were revoked pursuant to §§ 46.2-389 or 46.2-391(A) due to a federal conviction. Existing data sources do not contain sufficient detail to estimate the number of offenders who would be issued a restricted license under the proposal.

Impact of Proposed Legislation:

State adult correctional facilities. Offenders who would be affected by the proposal are currently subject to the penalties prescribed in § 18.2-272(A) if they drive on a revoked license. Since offenders who drive in violation of a restricted license (issued pursuant to § 18.2-271.1) are subject to the same penalties, permitting some of the affected individuals to receive a restricted license is unlikely to increase the state-responsible (prison) bed space needs of the Commonwealth.

Local adult correctional facilities. The proposal is not expected to affect local-responsible (jail) bed space needs.

Adult community corrections resources. The proposal will not affect adult community corrections programs.

Virginia's sentencing guidelines. Felony convictions under § 18.2-272 are covered by the current sentencing guidelines when this crime is the primary, or most serious, offense in a case. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

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 \$0 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.