



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 958

(Patron – Lewis)

LD#: 15103210

Date: 1/7/2015

Topic: Driving under the influence

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$5,698 (less than 1 bed)
- **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*

*Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposed legislation amends §§ 18.2-270, 19.2-386.34, 46.2-300, and 46.2-301.1, relating to driving while intoxicated and driving without a license.

The proposed modifications to § 18.2-270 establish a mandatory minimum term of 30 days for individuals convicted of certain offenses related to driving while intoxicated who do not hold a valid driver's license or who are not authorized by law to operate a motor vehicle in the Commonwealth at the time of the offense. The proposal also amends § 19.2-386.34 to provide for the seizure and forfeiture of the vehicle involved. Under the existing § 18.2-270(F), mandatory minimum sentences imposed pursuant to § 18.2-270 must be cumulative; as a result, the 30-day mandatory minimum term would be served in addition to the other mandatory minimum terms established in § 18.2-270 for driving while intoxicated.

In addition, the proposal establishes enhanced penalties for individuals who drive without a license in violation of § 46.2-300. Currently, under § 46.2-300, any individual who drives without a valid driver's license is guilty of a Class 2 misdemeanor. A second or subsequent violation is punishable as a Class 1 misdemeanor. Under the proposal, the penalty for a third or subsequent conviction under § 46.2-300 would be increased to a Class 6 felony. In addition, the penalty for a second violation of this section would be elevated to a Class 6 felony if the offender was previously convicted of certain offenses related to driving under the influence alongside the § 46.2-300 violation.

The proposed amendments to § 46.2-301.1 extend the period of time that particular offenders' vehicles may be impounded or immobilized.

Analysis:

According to fiscal year (FY) 2013 and FY2014 General District (Traffic) Court Case Management System (CMS) data, 6,548 offenders were convicted of a Class 1 misdemeanor under § 46.2-300 for

driving without a valid license after having previously been convicted under § 46.2-300. The majority of these offenders (86.7%) did not receive an active term of incarceration to serve after sentencing. The remaining 13.3% were sentenced to local-responsible (jail) terms, with a median sentence length of approximately eight days. Circuit Court and General District Traffic Court CMS data for FY2007 through FY2014 indicate that at least 14.4% of the 6,548 offenders had previously been convicted of two or more prior violations of § 46.2-300. Under the proposal, these offenders would be subject to a Class 6 felony penalty. It is unclear what proportion of the 6,548 offenders had previously been convicted of driving while intoxicated and a violation of § 46.2-300 arising out of a common act and could be prosecuted under the proposed Class 6 felony for a second violation.

According to FY2013 and FY2014 Circuit Court Case Management System (CMS) data, 509 offenders were convicted of driving while intoxicated and driving without a valid driver's license on the same date. Only 52 of these offenders, however, would serve additional time due to the proposed 30 day mandatory minimum term specified under the amended § 18.2-270. While 21.2% of the 52 offenders did not receive an active term of incarceration to serve after sentencing, another 69.2% were sentenced to a local-responsible (jail) term, with a median sentence length of approximately 3.3 months. The remaining five offenders were sentenced to state-responsible (prison) terms, with a median sentence length of one year. General District (Traffic) Court CMS data for FY2013 and FY2014 indicate that an additional 1,826 offenders convicted of driving while intoxicated were also convicted of driving without a valid driver's license. Of these offenders, 31.2% did not receive an active term of incarceration to serve after sentencing. The remaining 68.8% received a local-responsible (jail) term, with a median sentence of approximately 20 days.

Impact of Proposed Legislation:

State adult correctional facilities. The proposed legislation contains several aspects that may affect the state-responsible (prison) bed space needs of the Commonwealth. First, increasing the penalty for offenders who are convicted of a third or subsequent violation of § 46.2-300 from a Class 1 misdemeanor to a Class 6 felony may increase the state-responsible bed space needs. Although the number of offenders who would be affected could be identified using existing data sources, no similar existing felony offense is suitable to use to estimate judicial sentencing. Specifically, all current felony license offenses in the *Code* have mandatory minimum terms and using any of these offenses to model potential sentencing practices would likely overestimate the number of offenders who would receive a prison term. In addition, existing data sources do not contain sufficient detail to estimate the number of offenders who would be subject to the proposed felony offense for a second violation of § 46.2-300 if the prior violation was associated with certain offenses involving driving while intoxicated. While an offender may be convicted of these proposed Class 6 felonies over the next six years, the impact of these portions of the proposal cannot be determined.

Sufficient data exist to estimate the impact of establishing a mandatory minimum term of 30 days for any person who is convicted of specified offenses related to driving under the influence who also does not hold a valid driver's license at the time of the offense. Under § 18.2-270(F), mandatory minimum sentences imposed pursuant to this section must be served consecutively; as a result, the 30-day mandatory minimum term would be served in addition to the other mandatory minimum terms established in § 18.2-270 for driving while intoxicated. If offenders who are already subject to a mandatory minimum term of one year or more must be sentenced to a longer term of incarceration, this term will likely be added to the time that must be served in the state correctional facility. As a result, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth by potentially lengthening the existing prison terms of certain state-responsible inmates. The impact of this aspect of the proposal is expected to be less than one prison bed by FY2021. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$5,698.

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

Adult community corrections resources. The net impact on state community corrections resources and local community-based probation services cannot be estimated.

Virginia’s sentencing guidelines. As new felonies, convictions under the proposed modifications to § 46.2-300 would not be covered under the sentencing guidelines as the primary (most serious) offense in a case. However, a conviction under this provision can 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 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 at least \$5,698 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 2014.
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 2014.
3. Cost per prison bed was assumed to be \$30,397 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.*

Assumptions relating to sentencing

1. The impact of the proposed legislation, which would be effective on July 1, 2015, is phased in to account for case processing time.
2. Offenders meeting the criteria for the proposed mandatory minimum were assumed to serve the existing mandatory minimum terms plus the proposed mandatory minimum term. Offenders who were sentenced to less than the sum of the existing and proposed mandatory minimum terms were assumed to serve the sum of the mandatory minimum terms.
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, 2013. For driving while intoxicated offenses, this rate was 10.9%.

Limitations

1. The Circuit Court Case Management System excludes cases from Alexandria, Fairfax, and Virginia Beach.