



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1157 (Patron – Bell, Richard P.)

LD#: 16103697

Date: 1/12/2016

Topic: Driving while intoxicated; subsequent offenses

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) **

**Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 665 of the 2015 Acts of Assembly 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 extend the time period during which the penalty for a third or subsequent conviction for driving while intoxicated (DWI) can be enhanced. Currently, any person convicted of three offenses within 10 years under § 18.2-266 is guilty of a Class 6 felony with a mandatory minimum sentence of 90 days. Further, any person convicted of a fourth or subsequent offense within 10 years is guilty of a Class 6 felony that carries a mandatory minimum sentence of one year.

Under the proposal, the requirement that the offenses occur within 10 years would be modified to include any offenses occurring within 20 years. The penalties for these offenses would remain the same.

Analysis:

According to fiscal year (FY) 2014 and FY2015 data from the Sentencing Guidelines Database, 869 offenders were sentenced for a third DWI conviction within 10 years in violation of § 18.2-266. This was the primary, or most serious, offense in 732 of the cases. Of these, 13.4% were sentenced to a state-responsible (prison) term, with a median sentence of 1.2 years. Offenders received a local-responsible (jail) term in 85.4% of cases, with a median sentence of 3.3 months. The remaining 1.2% did not receive an active term of incarceration to serve after sentencing. In addition, 170 offenders were sentenced for a fourth or subsequent DWI conviction within 10 years. This offense was the primary offense at sentencing in 145 cases. In 89.7% of the cases, offenders received a state-responsible (prison) term, with a median sentence of 1.3 years.

Circuit Court Case Management System (CMS) data for this two-year period reveal that a third DWI conviction involving drugs within 10 years in violation of § 18.2-266 was the primary, or most serious, offense in 16 cases. The majority (87.5%) of offenders received a local-responsible (jail) term, with a median sentence of three months. The remaining 12.5 % received a state-responsible (prison) term, with a median sentence of 1.1 years. No offenders were convicted of a fourth or subsequent offense within 10 years involving drugs under § 18.2-266 during this time period.

Impact of Proposed Legislation:

State adult correctional facilities. By extending the time period during which an individual could be subject to penalty enhancements under § 18.2-270 for third or subsequent violations of § 18.2-266, the proposal may increase the number of felony convictions under this provision. In this way, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, available data are not sufficient to estimate the effect of this proposal on felony convictions. Since the number of additional felony convictions that may result cannot be estimated, the magnitude of the impact on prison bed space needs cannot be determined.

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

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 state community corrections resources. Since the number of cases that may be affected by the proposal cannot be determined, the potential impact on community corrections cannot be quantified.

Virginia's sentencing guidelines. Felony convictions for third or subsequent violations of § 18.2-266 that do not involve drugs or a child are covered by the sentencing guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal will not increase juvenile correctional center bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal will not increase the bed space needs of juvenile detention facilities.

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 665 of the 2015 Acts of Assembly 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 commitment to the custody of the Department of Juvenile Justice.

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