



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 730

#### *Amendment in the Nature of a Substitute (Patron Prior to Substitute – Stuart)*

LD #: 16105021

Date: 2/2/2016

Topic: Driving while texting, etc.

#### 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\*\*

\*\*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 adds §§ 18.2-36.3 and 18.2-51.7 to the *Code of Virginia*.

Pursuant to § 46.2-1078.1, using a handheld personal communications device to perform certain tasks while operating a motor vehicle is currently punishable as a traffic infraction. Under the proposed § 18.2-36.3, any person who, as a result of driving in violation of § 46.2-1078.1, unintentionally causes the death of another person would be guilty of aggravated involuntary manslaughter if the conduct demonstrates a reckless disregard for human life. This offense would be punishable by imprisonment for up to 20 years and would carry a mandatory minimum term of one year.

Under the proposed § 18.2-51.7, any person who, as a result of driving in violation of § 46.2-1078.1 in such a manner as to show reckless disregard for human life, unintentionally causes the serious bodily injury of another resulting in permanent and significant physical impairment would be guilty of a Class 6 felony.

#### Analysis:

According to the General District (Traffic) Court Case Management System (CMS) for fiscal year (FY) 2014 and FY2015, 3,589 offenders were convicted of a traffic infraction under § 46.2-1078.1 for using a handheld device while driving. Existing data sources do not provide sufficient detail to identify instances in which an offender's violation of § 46.2-1078.1 resulted in the death or permanent and significant physical impairment of another. However, affected offenders who demonstrate a reckless disregard for human life and cause the unintentional death of another may be sentenced similarly to those who are

currently convicted under § 18.2-36.1(B) for aggravated involuntary manslaughter involving driving while intoxicated. According to FY2014 and FY2015 Sentencing Guidelines data, 16 offenders were convicted of aggravated involuntary manslaughter in violation of § 18.2-36.1(B). This offense was the primary, or most serious, offense in 15 cases. All of these offenders received a state-responsible (prison) term, for which the median sentence was ten years.

Existing data are insufficient to estimate potential sentences relating to the injury of others under the proposed § 18.2-51.7.

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** Because it creates new felony offenses, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, existing data sources do not provide sufficient detail to estimate the number of additional felony convictions, or potentially longer sentences, which may result from enactment of the proposal. Therefore, the magnitude of the impact on prison bed space needs cannot be determined.

**Local adult correctional facilities.** Similarly, the proposal may also increase local-responsible (jail) bed space needs, but 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.** As new felony offenses, convictions under the proposed §§ 18.2-36.3 and 18.2-51.7 would not be covered by the sentencing guidelines when this crime is the primary (most serious) offense. A conviction for such an offense, however, could 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.

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