



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1403 (Patron – Bell, Richard P.)

LD#: 17100249

Date: 8/12/2016

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 780 of the 2016 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 under § 18.2-266 within 10 years 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 Sentencing Guidelines data for fiscal year (FY) 2014 and FY2015, 869 offenders were sentenced for a third DWI conviction under § 18.2-266 within 10 years. This offense was the primary, or most serious, offense in 732 of the cases. The majority (85.4%) of these offenders received a local-responsible (jail) term, with a median sentence of 3.3 months. An additional 13.4% were sentenced to a state-responsible (prison) term, with a median sentence of 1.2 years. The remaining 1.2% did not receive an active term of incarceration to serve after sentencing. Sentencing Guidelines data also indicate that 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. Of these, 89.7% received a state-responsible (prison) term, with a median sentence of 1.3 years.

Circuit Court Case Management System (CMS) data for FY2014 and FY2015 indicate that a third DWI conviction involving drugs within 10 years was the primary, or most serious, offense in 16 cases. The majority (87.5%) of these 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 individuals were convicted under § 18.2-266 for a fourth or subsequent offense within 10 years involving drugs during this time period.

Impact of Proposed Legislation:

State adult correctional facilities. By extending the time period during which an individual may 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 do not contain sufficient detail to estimate the number of additional felony convictions that may result. As a result, the magnitude of the impact on the prison bed space needs of the Commonwealth 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 780 of the 2016 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.