



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1850 (Patron – Gilbert)

LD#: 17102589

Date: 1/5/2017

Topic: Driving commercial vehicle while intoxicated

Fiscal Impact Summary:

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

- **Juvenile Direct Care:**
Cannot be determined*
- **Juvenile Detention Facilities:**
Cannot be determined*

* Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposed legislation amends § 46.2-341.28 to modify the penalties for driving a commercial vehicle while intoxicated, as defined in § 46.2-341.24. Currently, under § 46.2-341.28, a first violation is punishable as a Class 1 misdemeanor. A second violation is punishable by confinement in jail for not less than one month nor more than one year, while a third or subsequent violation is punishable by confinement in jail for not less than two months nor more than one year. Mandatory minimum penalties, ranging from two to 30 days, apply based on the number of prior offenses and the length of time between violations. The proposal amends the existing penalties for driving a commercial vehicle while intoxicated so that they parallel the penalties specified in § 18.2-270 for driving a motor vehicle while intoxicated.

Currently, under § 18.2-266(iii), it is unlawful for any person to operate a motor vehicle, engine or train while under the influence of any intoxicant or drug to a degree that impairs his ability to drive or operate a motor vehicle, etc., safely. Section 18.2-270 specifies the penalties for driving under the influence in violation of § 18.2-266 and provides for penalty enhancements based upon the offender's prior record and other factors. Under § 18.2-270, a first conviction for driving under the influence is punishable as a Class 1 misdemeanor. A second violation is punishable by incarceration from one month to one year. Mandatory minimum penalties ranging from five to 45 days apply based on factors such as blood alcohol level and the presence of a child in the vehicle, as well as the length of time between violations. A third violation within 10 years is a Class 6 felony carrying a 90-day mandatory minimum sentence, while a third violation within five years requires a mandatory minimum term of six months. A fourth or subsequent violation in 10 years is also a Class 6 felony and requires a mandatory minimum term of one year in prison. Driving while intoxicated with a minor in the vehicle adds five days to the mandatory minimum sentence (this additional penalty is not included in the proposed changes to § 46.2-341.28). Finally, offenders who have previously been convicted of certain felony offenses involving DUI are, upon

conviction of any subsequent DUI, guilty of a Class 6 felony and are subject to a one-year mandatory minimum term of incarceration.

Analysis:

According to fiscal year (FY) 2015 and FY2016 General District (Traffic) Court Case Management System (CMS) data, 15 offenders were convicted of a Class 1 misdemeanor for a first offense of driving a commercial vehicle while intoxicated. While the majority (60%) of these offenders did not receive an active term of incarceration to serve after sentencing, the remaining 40% were sentenced to local-responsible (jail) terms, with a median sentence of approximately 10 days. No second or subsequent offense convictions were observed during this time period.

Impact of Proposed Legislation:

State adult correctional facilities. Amending the penalties for driving a commercial vehicle while intoxicated to mirror those in § 18.2-270 is not expected to have an impact on the future state-responsible (prison) bed space needs of the Commonwealth. Individuals found driving a commercial vehicle while intoxicated currently can be prosecuted under § 18.2-266 and, therefore, punished pursuant to § 18.2-270, at the discretion of the Commonwealth's Attorney.

Local adult correctional facilities. Similarly, the proposal is not expected to increase local-responsible (jail) bed space needs.

Adult community corrections resources. The proposal is not expected to increase the need for adult community corrections resources.

Virginia's sentencing guidelines. The sentencing guidelines do not cover violations of § 46.2-341.24 when this offense is the primary, or most serious, offense in a case. However, convictions under this statute may 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 direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) 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.

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