



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2327 (Patron – Collins)

LD#: 17100553

Date: 1/11/2017

Topic: Driving under the influence

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Direct Care:**
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 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 numerous sections of the *Code* relating to driving while intoxicated (DWI) and refusal of blood or breath tests.

Currently, under § 18.2-268.2, individuals who are arrested for specified DWI-related offenses are required to submit to a breath test or, in certain circumstances, a blood test to determine the alcohol or drug content of their blood. Pursuant to § 18.2-268.3, the first refusal to submit to such tests is a civil offense. Refusal following one prior conviction for refusal or certain other DWI-related offenses within 10 years is punishable as a Class 2 misdemeanor and offenders are subject to a suspension of their driver's license for three years. Refusal following two or more prior convictions within 10 years is a Class 1 misdemeanor and also results in suspension of the offender's license for a period of three years. The proposal specifies separate penalties for refusal to submit to a breath test versus refusal to submit to a blood test and makes refusal to submit to a blood test a civil offense, regardless of the defendant's prior record. This aspect of the proposal may address concerns raised in *Birchfield v. North Dakota* (2016). Under the proposal, the penalty for a second refusal to submit to a breath test is increased from a Class 2 misdemeanor to a Class 1 misdemeanor. In addition, the proposal extends the period of license suspension for a third or subsequent refusal from three years to an indefinite period.

Section 18.2-272 of the *Code* establishes base penalties for operating a motor vehicle while a driver's license is revoked or restricted following a conviction for certain offenses. It is a Class 1 misdemeanor to drive or operate a motor vehicle, engine or train in violation of a revoked or restricted license under § 18.2-272(A). Under subsection B, it is a Class 1 misdemeanor for an individual whose driver's license was revoked or restricted as the result of a DWI-related conviction to operate a motor vehicle with a

blood alcohol content of .02 percent or more. A third or subsequent violation of § 18.2-272 within 10 years is a Class 6 felony. The proposal expands these provisions to apply to individuals who have been deprived of the right to drive following a conviction for refusal associated with driving a commercial vehicle while intoxicated. Under § 46.2-391(D), driving on a revoked license (1) with endangerment, (2) in conjunction with a DWI violation, or (3) as a second or subsequent offense is a felony punishable by up to five years imprisonment and carries a 12-month mandatory minimum term of confinement.

Analysis:

According to General District (Traffic) Court Case Management System (CMS) data for fiscal year (FY) 2015 and FY2016, 787 offenders were subject to a civil penalty for refusal to submit to a blood or breath test in violation of § 18.2-268.3. An additional 198 were convicted of a Class 2 misdemeanor for a second offense, while 71 were sentenced for a Class 1 misdemeanor under § 18.2-268.3 for a third or subsequent offense.

Existing data do not contain sufficient detail to determine the number of cases that would be affected by the proposed amendments. However, affected offenders may be sentenced similarly to those who are currently convicted under §§ 18.2-272 and 46.2-391.

General District (Traffic) Court CMS data for FY2015 and FY2016 indicate that 56% of offenders convicted of a Class 1 misdemeanor under § 18.2-272(A) for driving on a revoked or restricted license after a DWI conviction (as the primary, or most serious, offense) were given a local-responsible (jail) term. The median sentence in these cases was approximately 20 days. The remaining offenders did not receive an active term of incarceration to serve after sentencing. For offenders whose primary offense was a misdemeanor violation of § 18.2-272(B) for driving on a revoked or restricted license with a blood alcohol content greater than .02 percent, most (80%) were given a jail term with a median sentence of approximately one month.

Sentencing Guidelines data for FY2015 and FY2016 indicate that 102 offenders were convicted of a felony for a third or subsequent violation of § 18.2-272. This was the primary, or most serious, offense in 71 of the cases. Of these, 33 (46.5%) were sentenced to a local-responsible (jail) term with a median sentence length of three months. While 11 offenders (15.5%) did not receive an active term of incarceration to serve after sentencing, the remaining 38.0% were sentenced to state-responsible (prison) terms, for which the median sentence was one year.

Examining Sentencing Guidelines data for this two-year period also revealed that 207 individuals were convicted of a felony under § 46.2-391 for driving in violation of a revoked or restricted license. In 156 of the cases, the license offense was the primary, or most serious, offense. Of those, the majority (87.2%) received a state-responsible (prison) term with a median sentence length of two years. For the 11.5% of offenders who were given a local-responsible (jail) term, the median sentence length was 12 months. The remaining 1.3% were sentenced to the time served by the offender while awaiting trial.

Impact of Proposed Legislation:

State adult correctional facilities. By increasing the length of time that certain individuals' licenses would be revoked, the proposal would also increase the period of time that these individuals could be convicted of a felony under §§ 18.2-272 or 46.2-391 for driving while their driver's license is revoked. In this way, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing databases do not contain sufficient detail to identify cases that would be affected by the proposal or to estimate the net impact of the proposed legislation; therefore, the impact of the proposal on prison bed space needs cannot be determined.

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

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

Virginia’s sentencing guidelines. Felony convictions under § 18.2-272 are covered by the current sentencing guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice (DJJ), 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 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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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