



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2435

(Patron – Minchew)

LD#: 17103552

Date: 1/23/2017

Topic: Use of handheld personal communications devices while driving

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 modifies § 46.2-1078.1 relating to the use of handheld personal communications devices while driving. The proposal removes language specifically prohibiting a driver from manually entering letters or text into a device or reading an e-mail or text message transmitted to, or stored in, the device. Under the proposal, using a handheld device while driving is prohibited unless the device is configured to allow voice-operated or hands-free operation and it is used in that manner. The proposal also expands current exceptions (for example, to report an emergency) to include the use of the handheld device for navigation or playing audio, as long as the device is physically mounted in the vehicle while being used. The proposal adds language specifically to permit the use of two-way CB radios in vehicles. A violation of § 46.2-1078.1 is a traffic infraction.

The proposal also creates a new reckless driving offense. Under the proposal, using certain handheld communications devices while driving would be punishable as reckless driving if the individual commits an additional traffic offense or if the use proximately results in an accident. Pursuant to § 46.2-868, reckless driving is punishable as a Class 1 misdemeanor or, if the person's license had been suspended or revoked due a moving violation and the reckless driving was the sole and proximate cause of death of another, a Class 6 felony.

Analysis:

According to the Virginia Highway Safety Office, there were 1,453 traffic fatalities in the Commonwealth during 2014 and 2015.¹ It is not known how many of these fatalities were caused by a driver whose

¹ 2015 Virginia Traffic Crash Facts, Virginia Highway Safety Office. Accessed August 12, 2016, from https://www.dmv.virginia.gov/safety/crash_data/crash_facts/crash_facts_15.pdf

license was suspended at the time of the accident or whether any of the accidents involved use of a personal communications device.

Data from the Circuit Court Case Management System (CMS) for fiscal year (FY) 2014 and FY2015 indicate that eight offenders were convicted of felony reckless driving with a suspended license resulting in the death of another under § 46.2-868(B). This offense was the primary, or most serious, offense in seven of the cases. Of these, three offenders were sentenced to a state-responsible (prison) term with a median sentence of approximately 2.7 years. Two offenders received a local-responsible (jail) term; both were sentenced to two months. The remaining two offenders did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. Because it defines a new reckless driving offense, which under certain circumstances is punishable as a Class 6 felony, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. The number of additional felony convictions that may result from the proposal cannot be estimated; however, the impact, if any, is likely to be small.

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 additional offenders, the proposal may increase the need for adult community corrections resources. However, the potential impact on state and local community corrections programs cannot be determined.

Virginia's sentencing guidelines. Convictions for reckless driving under § 46.2-868 are not covered by the sentencing guidelines as the primary (most serious) offense in a case; however, convictions for this crime may augment the guidelines recommendation if a covered offense is the most serious at sentencing. 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 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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