



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 398 (Patron – McDougle)

LD#: 18100329

Date: 11/3/2017

Topic: Driving while intoxicated, 4th offense

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:**
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 836 of the 2017 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 of the *Code of Virginia*, relating to driving while intoxicated (DWI). Section 18.2-270 specifies the penalties for driving while intoxicated in violation of § 18.2-266 and provides for penalty enhancements based upon the offender's prior record and other factors. Currently, a fourth or subsequent DWI violation in 10 years is a Class 6 felony (statutory penalty range of one to five years imprisonment) and requires a mandatory minimum term of one year in prison. The proposal would increase the penalty for this offense to a Class 4 felony (statutory penalty range of two to ten years imprisonment), while preserving the mandatory minimum sentence.

DWI violations often accompany other serious felony offenses. For instance, driving under the influence resulting in permanent impairment or disability to one or more victims is a Class 6 felony under § 18.2-51.4(A). Vehicular involuntary manslaughter associated with driving under the influence is a Class 5 felony under § 18.2-36.1(A), while aggravated vehicular involuntary manslaughter associated with DWI under § 18.2-36.1(B) is a felony punishable by imprisonment from one to twenty years and requires a mandatory minimum term of one year in prison.

Analysis:

According to the fiscal year (FY) 2016 and FY2017 Sentencing Guidelines database, 148 offenders were convicted of a felony for a fourth or subsequent DWI violation under § 18.2-266. This offense was the primary, or most serious, offense in 118 of the cases. The majority (88.1%) of these offenders were sentenced to state-responsible (prison) terms, with a median active sentence of approximately 1.3 years.

The remaining offenders (11.9%) received local-responsible (jail) terms with a median active sentence of 12 months.

Impact of Proposed Legislation:

State adult correctional facilities. By increasing the penalty for a fourth or subsequent DWI violation in 10 years from a Class 6 felony to a Class 4 felony, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Although the number of offenders who would be affected could be identified using existing data sources, no existing Class 4 felony offense is similar enough to be able to estimate judicial sentencing under the proposal. Therefore, the impact of the proposal on prison bed space needs cannot be quantified.

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

Adult community corrections resources. The impact of the proposal on local or state community corrections resources cannot be determined.

Virginia's sentencing guidelines. The sentencing guidelines currently cover fourth or subsequent DWI convictions within 10 years when this offense is the primary, or most serious, offense in a case. No adjustment to the guidelines would be necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice, the proposal would have no impact on direct care (juvenile correctional center or alternative commitment placement) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal would have no impact on 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 836 of the 2017 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.

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